

# **Exhibit L**

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF DISTRICT OF TEXAS  
3  
4 MARY LALIBERTE, et al., )  
5 )  
6 Plaintiffs, )  
7 )  
8 vs. ) No. 4:22-cv-03290(ABH)  
9 )  
10 QUANTA SERVICES, INC., )  
11 )  
12 et al., )  
13 )  
14 Defendants. )  
15 \_\_\_\_\_)

12 DEPOSITION VIA VIDEOCONFERENCE OF  
13 RICHARD A. MARIN, an expert witness  
14 herein, taken by Morgan, Lewis &  
15 Bockius, LLP, at Escondido, California,  
16 at 9:01 a.m., Friday, October 18, 2024,  
17 before Bonnie Ann Grose, CSR 11703.

25 Job No. CS6946843

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12

13

14 I N D E X

15

WITNESS: RICHARD A. MARIN

16

EXAMINATION BY:

PAGE

17

MR. BLUMENFELD

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	E X H I B I T S			
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1                   ESCONDIDO, CALIFORNIA                   FRIDAY, OCTOBER 18, 2024

2   8:59 A.M.

3   \*\*\*

4                   THE VIDEOGRAPHER: Good morning. We are going on  
5                   the record at 8:59 a.m. on October 18th, 2024. This is  
6                   Media Unit 1 of the video-recorded deposition of                   08:59:58  
7                   Richard Marin taken by Counsel for Defendant in the  
8                   matter of Mary Laliberte, et al. versus Quanta Services,  
9                   Inc., et al. filed in the United States District Court  
10                  for the Southern District of Texas. The case number is  
11                  4:22-cv-03290(AHB).

12                  This deposition is being conducted remotely using  
13                  virtual technology. My name is Jeff Nichols                   09:00:29  
14                  representing Veritext Legal Solutions, and I'm the  
15                  videographer. The court reporter is Bonnie Ann Grose  
16                  from the firm Veritext Legal Solutions.

17                  Counsel will now please state their appearances and  
18                  affiliations for the record starting with the noticing  
19                  attorney, please.

20                  MR. BLUMENFELD: Good morning. Hi. This is  
21                  Jeremy Blumenfeld from Morgan Lewis on behalf of the  
22                  defendants. We also have on behalf of defendants  
23                  Matthew McKenna from Morgan Lewis, Keri Engelman from                   09:00:57  
24                  Morgan Lewis, Maria DeCastro from Morgan Lewis,  
25                  Carolyn Campbell, in-house Counsel at Quanta, and

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1 Jason Charous, consultant, helping us in connection with  
2 the matter.

3 MR. BERIN: Good morning. Alec Berin from Miller  
4 Shah representing the plaintiff and the witness in  
5 today's proceeding, Mr. Richard Marin.

6 THE VIDEOGRAPHER: Thank you. Will the court  
7 reporter please swear in the witness, and then Counsel,  
8 you may proceed.

09:01:24

9  
10 RICHARD A. MARIN,  
11 an expert witness herein, having been sworn, testifies  
12 as follows:

13  
14 -EXAMINATION-

15  
16 BY MR. BLUMENFELD:

17 Q. Thanks, Mr. Marin.

18 Can you see me okay?

19 A. I can, yes.

20 Q. And you can hear me okay?

21 A. Yes, I can.

22 Q. Terrific.

23 I know you've been deposed many times, so I'm not  
24 really going to go through the ground rules you might  
25 typically hear at the beginning of the deposition.

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1 There's a lot of stuff I want to cover, but I also 09:01:59  
2 recognize there are technology issues that sometimes  
3 arise. If you have a problem, and you have trouble  
4 either hearing me or seeing me or looking at a document  
5 or what have you, please just let me know, and we'll  
6 either take a break or figure out a way to solve that.

7 Okay?

8 A. Very good.

9 Q. Great. We can take a break approximately every  
10 hour or so. Just let me know, and we'll find a good  
11 time to do so at your leisure.

12 A. Okay. Thank you.

13 Q. Sure. 09:02:30

14 You were recently an expert in connection with the  
15 Genworth ERISA class action; correct?

16 A. Correct.

17 Q. And you were also an expert in connection with  
18 the Prudential ERISA class action?

19 A. Correct.

20 Q. Any other ERISA class actions in which you have  
21 provided an expert report?

22 A. Yes.

23 Q. What cases?

24 A. I think they were all attached to my report, if 09:02:59  
25 I may reference that.

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1           Q. Sure. If you need to do that, that's fine. So  
2 let's start by marking that as an exhibit so it's  
3 formally in the record.

4           A. Okay.

5           Q. Exhibit 1 to your deposition is a copy of your  
6 August 1, 2021 expert report.

7           A. Correct.

8           Q. I see you have a hard copy of that document.

9           A. I do. The only thing I didn't bother to do is  
10 print off exactly what you're asking me to reference         09:03:30  
11 right now, which is my own resume and my own listing of  
12 cases. But to the best of my recollection, there have  
13 been several other ERISA cases. One was the DST case  
14 several years ago and --

15           Q. Mr. Marin, it's important to me that I get a  
16 truthful and complete answer, so if you want to look at  
17 your expert report that you were able to download a         09:03:57  
18 couple of minutes ago just to make sure we get them all.

19           A. Okay. Will do. I'm referencing this right  
20 now. Okay. Okay. Let me just -- Let's see here.         09:04:14  
21 Okay. Those were foreign pension funds, so not that.

22           The DST systems I mentioned already.

23           Iowa Public Employees Retirement System case, which  
24 was a securities lending class action brought against         09:04:55  
25 where I represented the plaintiff against mostly all of

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1           the prime brokerage firms in the country representing  
2           Iowa Public Employee Retirement Systems.

3           Los Angeles County Employee Retirement System,  
4           Orange County, Sonoma County Retirement, so that was  
5           another case. Let's see. I don't believe that's an --   09:05:27  
6           we said Prudential, we said Genworth, and that would be  
7           it.

8           Q. Great. Thank you.

9           The Iowa Public Employees Retirement System versus   09:05:57  
10          Bank of America et al. case?

11         A. Yes.

12         Q. Do you know what that case was about?

13         A. Yes. It was basically about securities lending  
14          and the transparency or lack thereof that prime brokers  
15          use when they represent -- when they borrow securities  
16          from major ERISA funds like Iowa Public Retirement  
17          System.

18         Q. Okay.

19         And are you confident that the claims in that case   09:06:28  
20          were, in fact, ERISA claims? And I ask because the Iowa  
21          Public Retirement System is a public entity.

22         A. Yes, yes. Okay. The answer -- the answer  
23          is -- no, you're correct. It may not have been ERISA  
24          claims. Thank you for reminding me of that. They were  
25          indeed retirement systems. They're non-retirement-based

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1 ERISA claims because they're public funds. You are 09:06:59  
2 correct.

3 Q. Got it.

4 And did anything in that case involve evaluating  
5 investment options in any retirement systems?

6 A. No.

7 Q. What was the DST case about?

8 A. The DST case was a case involving a 401K plan  
9 of DST systems, and it had to do with -- it was an  
10 arbitration, and it had to do with the excess 09:07:29  
11 concentration in one particular stock that basically  
12 harmed the participants through over-concentration, and  
13 it was a case initially brought against both the  
14 committee of the plan sponsor as well as the investment  
15 manager involved. Investment manager settled early, and 09:07:59  
16 then it continued as an arbitration against the  
17 committee of the plan sponsor and was heard on the basis  
18 of five to seven individual participants of the  
19 400-some-odd participants in the plan. So we basically  
20 had individual arbitrations representing groupings of 09:08:27  
21 those participants over the course of 18 months, so sort  
22 of one set of arbitration hearings every week for 18  
23 months or so.

24 Q. You testified in one arbitration hearing a week  
25 for 18 months?

Page 11

1 A. Yes.

2 Q. And how long was your testimony in each of  
3 these arbitrations?

4 A. Well, they used an agreed-upon technique for 09:08:54  
5 the expert testimony of having one question and  
6 cross-examination session recorded. They played the  
7 recorded expert sessions for those arbitrators during  
8 the week, and then on Fridays of each week, literally  
9 each week, I was asked, as were the other experts, to be 09:09:29  
10 available for questions from the arbitration panel or  
11 questions from either of the two opposing Counsels, so  
12 it was -- I didn't have to repeat myself every week.  
13 They used the recordings for that, but I almost always  
14 had to answer some questions each week from the  
15 different arbitration panels.

16 Q. Okay.

17 And the stock that was at issue in the DST systems  
18 case was Valient Pharmaceuticals; correct?

19 A. That's correct.

20 Q. And the mutual fund that was being challenged  
21 the in the DST Systems case, what was the concentration  
22 of that fund in Valient Pharmaceuticals?

23 A. It ranges over the referenced period from,  
24 let's say, 20 percent of the fund to 47 percent of the  
25 fund. 09:10:30

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1           Q. And your opinions in that case was that that  
2           was an excessive concentration in a single security and  
3           made the fund an imprudent investment choice?

4           A. Yes.

5           Q. Did you employ a methodology looking at  
6           three-year performance and five-year performance similar  
7           to what you did in this case in the DST Systems case?

8           A. Well, this is going back three or four years  
9           now. I would have to go back and reference that           09:10:57  
10           information, but it wouldn't surprise me if I used -- we  
11           used three- and five-year averaging. I just don't  
12           recall offhand.

13           Q. Okay.

14           And do you have copies of any arbitration decisions  
15           involving the DST systems case?

16           A. No, I don't.

17           Q. Do you know if there were written explanations  
18           with opinions?

19           A. I do not, but I'm sure that's available through   09:11:29  
20           the system. I was just told in general the outcome by  
21           the attorneys involved, and they were generally fairly  
22           pleased with the outcome of those arbitrations, and they  
23           felt that they had received adequate compensation for  
24           their participants in the order of magnitude of hundreds  
25           of millions of dollars, is what I was told. I didn't

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1 see it in writing. I was merely told that. 09:11:57

2 Q. Okay.

3 DST Systems didn't involve any target date funds;  
4 correct?

5 A. No.

6 Q. The Iowa Public Employees Retirement System  
7 case didn't service any target date funds; correct?

8 A. Correct.

9 Q. And the Prudential case didn't involve any  
10 target date funds?

11 A. No, I don't believe it did.

12 Q. The Genworth case did involve target date  
13 funds, specifically the BlackRock target date funds; 09:12:26  
14 right?

15 A. That's correct.

16 Q. Are there any other cases on your CV in which  
17 you have testified as an expert that involve target date  
18 funds whether it's an ERISA case or not?

19 A. Not that were of issue. In other words, for  
20 all I know the DST fund may have had a target fund  
21 sleeve, but it wasn't at issue, so it wasn't a focus of  
22 mine.

23 Q. Thank you. I appreciate the clarification.

24 Mr. Marin, are you a participant in any 401K plans 09:12:59  
25 today?

Page 14

1 A. No.

2 Q. Have you been in the last 20 years?

3 A. Yes.

4 Q. What plans?

5 A. Last 20 years? Well, I was -- Slightly more  
6 than 20 years ago I was in the Bankers Trust Company.  
7 Had a 401K plan. I was in the Bear Stearns 401K plan, I 09:13:24  
8 was in the Deutsche Bank 401K plan, and have been in  
9 several others with some smaller businesses that I  
10 became affiliated with. All of them have been put into  
11 rollover IRAs at this point, so I'm not still in any  
12 401K plans at this point.

13 Q. Got it.

14 Do you still have the rollover IRAs?

09:13:58

15 A. Yes.

16 Q. How many do you have?

17 A. I have two.

18 Q. Okay.

19 I don't need to know the amounts that are invested  
20 in the rollover IRAs, but can you tell me what they are  
21 invested in?

22 A. I was raised -- because I was the senior 09:14:26  
23 fiduciary at Bankers Trust Company for many years and  
24 was always cognizant of the need to be careful about  
25 conflict of interest, so I never managed my own funds.

Page 15

1 I always either had them managed by other people,  
2 outside managers, so my IRA funds are managed by JP  
3 Morgan Asset Management.

09:14:59

4 Q. Both of them, both of the rollover IRAs?

5 A. Yes.

6 Q. Okay.

7 Are they invested in mutual funds?

8 A. Well, I have to be honest with you. I don't  
9 look at them very often, but I imagine there are some.

10 Q. Can you identify for me what mutual funds you  
11 are invested in?

12 A. No, I cannot. I literally take a hands-off 09:15:26  
13 approach to my own investments.

14 Q. You don't monitor your own investment on a  
15 quarterly basis?

16 A. Oh, I monitor them, but I don't, let's say, get  
17 involved in the grand detail. I have  
18 investment-management people that I've had for over 20  
19 years, and I put my trust and faith in them, because  
20 like I said, for my entirety of my professional career I  
21 have taken a hands-off approach to avoid any potential 09:15:58  
22 semblance of conflict of interest.

23 Q. Okay.

24 Q. Do you know if you're invested in any target date  
25 funds today?

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1 A. I don't believe I am, no.

2 Q. Okay.

3 But you don't know what you are invested in?

4 A. I am -- I cannot recite my investments, no.

5 Q. Okay.

6 And you don't review your current investments

7 against some sort of benchmark on a quarterly basis?

8 MR. BERIN: Object to form.

09:16:29

9 THE WITNESS: I have regular meetings with my  
10 investment managers, and we discuss performance in  
11 general.

12 MR. BLUMENFELD:

13 Q. You don't discuss performance against the  
14 benchmarks of the investments that you are invested in  
15 on a quarterly basis or annual basis or on any sort of  
16 basis?

17 A. No, not very often.

18 Q. Okay.

19 When was the last time you had such a meeting?

20 A. Well, I used to be -- My accounts used to be 09:17:00  
21 handled at First Republic Bank, and there was a  
22 transition bringing them all into JP Morgan, so that all  
23 occurred in May of this year.

24 Q. So you had a meeting with the folks at JP  
25 Morgan in May of this year?

Page 17

1           A. Well, I talk to them more regularly than that,  
2           but we had a specific discussion about them -- the           09:17:29  
3           accounts when they transferred over in May of this year,  
4           and I probably talked to my investment manager there.  
5           And I met with him once since then probably in August,  
6           and I've probably talked to him about it on the phone on  
7           one issue or another a half a dozen times.

8           Q. Okay.

9           You don't remember from your meeting in August of  
10          this year what investments you hold?                           09:18:00

11          A. No.

12          MR. BERIN: Object to form.

13          MR. BLUMENFELD:

14          Q. Okay.

15          And when your funds were managed by First Republic,  
16          do you know what you were invested in during that time  
17          period?

18          A. No, but I know that there hasn't been much  
19          change as it's transitioned from First Republic to JP  
20          Morgan other than normal portfolio rebalancing.

21          Q. How long was your money managed by First           09:18:29  
22          Republic?

23          A. I'm going to say 20 to 25 years.

24          Q. And as you sit here today, you can't identify a  
25          single mutual fund that you are invested in during that

Page 18

1 20-to-25-year time period?

2 A. You know, let me just repeat it for you,  
3 Jeremy. I was brought up to stay hands-off on my own 09:18:58  
4 personal investments, so I don't review them in  
5 specificity. I leave that to my investment managers who  
6 are trusted advisors for me.

7 Q. Do you know what criteria First Republic used  
8 to monitor the investment options -- excuse me, not the  
9 investment options.

10 Do you know what criteria First Republic used to  
11 monitor the investments that it was managing in your 09:19:29  
12 account?

13 A. No.

14 Q. Do you know the criteria that JP Morgan  
15 currently uses to monitor the investments that it is  
16 managing for you?

17 A. Not specifically, no.

18 Q. Do you know generally?

19 A. I'm familiar with JP Morgan's  
20 investment-management area because they were a  
21 competitor of ours for many, many years, but I don't  
22 know specifically what methodologies they use in 09:19:56  
23 managing their investments, no.

24 Q. So you don't know what criteria JP Morgan  
25 currently used to select investments for you; correct?

Page 19

1           A. I know -- I know my investment manager very  
2           well, and I know that his approach hasn't changed from  
3           First Republic to JP Morgan.

4           Q. Okay.

5           Can you answer my question?

6           A. Would you repeat it, please?

7           Q. Do you know what criteria JP Morgan uses to  
8           select investments for your account?

9           A. Not that I can recite to you and specify to  
10          you, no.

11          Q. Okay.

12          Do you know what criteria JP Morgan uses to monitor  
13          the investments that are in your account?

14          A. They use normal monitoring methodologies used      09:20:59  
15          by major money-management firms.

16          Q. Can you be more specific than that?

17          A. No, I cannot.

18          Q. Okay.

19          And do you know what criteria First Republic used  
20          to select the investments that it was including in your  
21          account?

22          A. It has been done over many years, so the answer  
23          is no.

24          Q. Okay.

25          And do you know what criteria First Republic used      09:21:28

Page 20

1 to monitor the investments that were in your account?

2 A. Not specifically, no.

3 Q. Does SEDA Experts have a defined contribution  
4 plan?

5 A. I'm not an employee of SEDA. I am -- meaning a  
6 W-2 employee. I do, I guess you'd call it, gig work in 09:22:00  
7 terms of doing expert witness work. I'm a 1099  
8 recipient, so I'm not familiar with their retirement  
9 plans because I don't participate in them.

10 Q. Do you know if they have one?

11 A. No, I don't. I don't know specifically.

12 Q. Okay.

13 And I take it, then, you're not a fiduciary of the  
14 SEDA Experts' 401K plan? 09:22:27

15 You're not involved at all in the SEDA Experts'  
16 401K plan if such a plan exists?

17 A. No.

18 Q. And if the SEDA Experts' 401 plan has target  
19 date funds in it?

20 A. No, I don't.

21 Q. Aside from your work as an expert in the  
22 Genworth case and in this case, do you have any other  
23 experience in connection with your work at SEDA that  
24 relates to target date funds?

25 A. No.

Page 21

1 Q. You also list in your CV that you did work for 09:23:01  
2 Low Emissions Resource Corporation?

3 A. Yes.

4 Q. Does that have a defined contribution plan?

5 A. They did not have a defined contribution plan,  
6 no.

7 Q. Did Low Emissions Resource Corporation have 09:23:34  
8 anything to do with target date funds?

9 A. No.

10 Q. When you were at Low Emission Resource  
11 Corporation, did you do any work on defined contribution  
12 plan investment and monitoring, whether it's target date  
13 funds or anything else?

14 A. For that company, no.

15 Q. For anybody?

16 A. Well, you're talking about a period of time  
17 when I was teaching, and because I teach courses in the 09:23:59  
18 investment area and in the pension area, and indeed it  
19 was during those years I was doing expert witness work,  
20 the answer is yes, I had involvement to the extent that  
21 it came into the issues of expert witness work or my  
22 teaching.

23 Q. Was your teaching done in connection with  
24 anything from Low Emissions Research Corporation? 09:24:30

25 A. No.

Page 22

1           Q. And your testifying work was also not in  
2 connection with Low Emissions Research Corporation;  
3 correct?

4           A. No.

5           Q. Okay.

6           Do you know the name of the textbooks you used to  
7 teach?

8           A. I generally didn't use textbooks because I  
9 teach the practicum generally, and therefore I pulled  
10 together materials. I had sort of reading packages of 09:24:58  
11 different excerpts from books and different excerpts  
12 from articles and other information available to teach  
13 from, not a specific textbook.

14           Q. You would pull together portions of certain  
15 books and portions of certain articles?

16           A. Yes.

17           Q. Do you remember the names of any of them? 09:25:29

18           A. No, not offhand.

19           Q. Okay.

20           You also list on your CV work you did for New York  
21 Wheel, LLC?

22           A. Correct.

23           Q. Did that have a defined contribution plan?

24           A. Yes. I believe it did for a short period of  
25 time, and that plan was managed by our payroll company.

Page 23

1       This was a small company, and I had since been rolled           09:25:52  
2       over into my overall rollover IRA.

3           Q. Do you recall what investment options were in  
4           the New York Wheel, LLC defined contribution plan?

5           A. No, I don't recall.

6           Q. Do you recall if there were any target date  
7           funds in it?

8           A. I don't recall.

9           Q. And did you play any role with regard to the  
10          defined contribution plan at New York Wheel?

11          A. Well, I was the CEO, and as such I was involved   09:26:29  
12          in approving the use of the plan. But no, I wasn't  
13          involved on a regular basis at that point.

14          Q. Were you a fiduciary for the New York Wheel  
15          plan?

16          A. No.

17          Q. This says on your CV that you were there from  
18          2011 to 2018; correct?

19          A. Correct.   09:27:00

20          Q. And I just want to be clear about this.

21          You don't remember now whether that plan offered  
22          any target date funds?

23          A. Well, the plan wasn't available the whole time  
24          of my employment. It was just available for a period of  
25          time, and the answer is no, I don't remember.

Page 24

1 Q. Okay.

2 What period of time was it available?

3 A. I -- I don't have the dates on the top of my  
4 fingers. I'm going to guess that out of those six or 09:27:29  
5 seven years it was probably available for three.

6 Q. You think it was the last three?

7 A. No. I think it was probably the middle three.

8 Q. Okay. Thank you.

9 Approximately how many employees did New York Wheel  
10 have?

11 A. Direct employees, because we tended to use  
12 contractors a lot, direct employees probably as many as 09:27:56  
13 ten.

14 Q. And who was the payroll company that you said  
15 managed that 401K plan?

16 A. I've forgotten the name.

17 Q. Did Ironwood Global have a defined contribution 09:28:26  
18 plan?

19 A. No.

20 Q. Does Ironwood Global have anything to do with  
21 target date funds?

22 A. No.

23 Q. Did Ironwood Global evaluate mutual funds?

24 A. No.

25 Q. You also worked for a company called Africa 09:28:57

Page 25

1           Israel Investments?

2           A. Correct.

3           Q. Did that have a defined contribution plan?

4           A. No, they did not.

5           Q. Did Africa Israel Investments have anything to  
6 do with target date funds?

7           A. No.

8           Q. Did it have anything to do with mutual funds?

9           A. No.

10          Q. What's Duff Capital?                                   09:29:32

11          A. Duff Capital was a startup hedge fund platform  
12 that was, you know, highly funded by a private equity or  
13 venture capital firm, and I acted as a consultant to  
14 them for about a year.

15          Q. What did you do for Duff Capital?

16          A. I worked specifically on securities-lending       09:29:59  
17 platforms and overall pension marketing plans for how to  
18 market the fund into defined benefit and eventually  
19 defined contribution plans.

20          Q. Was Duff Capital operating a mutual fund?       09:30:27

21          A. No.

22          Q. What kind of investment was it?

23          A. It was a multi-strategy hedge fund.

24          Q. That you were trying to sell to defined benefit  
25 and defined contribution plans?

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1                   A. Well, during the year when I acted as a  
2 consultant to them they were in the formative stages.  
3                   This was, as I said, an extremely well funded,  
4                   400 million-some dollars as I recall, a hedge fund         09:31:00  
5 platform to go after a very large universe of investors,  
6 and as such they were looking to figure out how to  
7 position their hedge fund to take advantage of issues  
8 like platform-based institutional securities lending and  
9 also how to position themselves to go after defined --         09:31:28  
10 large blocks of defined benefit money, eventually --  
11 didn't get to this point but eventually then how to  
12 create sleeves that would have qualified as mutual  
13 fund-type sleeves for defined contribution.

14                  Q. Do you know if that ever happened?

15                  A. I don't believe the last part ever happened.

16                  Duff Capital basically went into extinction when the         09:31:56  
17 markets collapsed hard in 2008 and 2009.

18                  Q. Do you know when Duff Capital was formed?

19                  A. Well, I believe it would have been the middle  
20 or the end of 2007.

21                  Q. Did it have any pension fund investors?

22                  A. At that point, no.    09:32:30

23                  Q. Sorry.

24                  When you say "at that point," do you mean --

25                  A. At the point when I was involved with it, which

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1           was basically from the beginning of 2008 until the end  
2           of 2008. October or so of 2008 they did not have any  
3           pension fund investors. They were merely in the  
4           preparation, platform-building stage during that year.       09:32:56

5           Q. On your CV you also identify that you worked  
6           for Bear Stearns Assets Management from 2003 to 2007; is  
7           that correct?

8           A. That's correct.

9           Q. Bear Stearns did have a 401K plan?

10          A. They did.

11          Q. You were a participant in it?

12          A. I was.

13          Q. Do you recall any of the investments that you  
14          invested in within the Bear Stearns 401K plan?

15          A. No. That's too long ago. I don't remember.

16          Q. Okay.

17           Did you play a role in connection with the Bear       09:33:29  
18           Stearns 401K plan aside from as a participant in it?

19          A. No.

20          Q. You weren't a fiduciary for the plan?

21          A. Well, I was effectively the senior fiduciary  
22           for the buy side of the business since I was chairman  
23           and CEO of Bear Stearns Asset Management, so that had  
24           less -- That did not have anything to do with managing   09:33:57  
25           the defined contribution plan of the firm overall, but I

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1 was senior fiduciary for the 50 to 60 billion dollars  
2 that we managed for others including defined benefit and  
3 defined contribution plans.

4 Q. Okay.

5 A. And there were a number of mutual funds there,  
6 yes.

7 Q. There were a number of Bear Stearns mutual  
8 funds?

9 A. Correct.

10 Q. That Bear Stearns offered to third-party 09:34:29  
defined contribution plans that might want to invest in  
11 them or other investors that might want to invest in  
12 them?  
13

14 A. Correct.

15 Q. Do you know if the Bear Stearns 401K plan  
16 invested in any of them?

17 A. I believe they did, yes.

18 Q. Do you recall which ones?

19 A. No.

20 Q. Am I right that your experience with respect to  
investments really derives from your time at Bear 09:34:59  
21 Stearns and Beehive Ventures and Deutsche and Bankers  
22 Trust?  
23

24 A. Yes, that and teaching.

25 Q. And teaching and your expert testimony?

Page 29

1 A. Correct.

2 Q. But you stopped working at Bear Stearns in  
3 2007; correct?

4 A. That's correct.

5 Q. So aside from your teaching work that you do  
6 and your testifying work, you haven't been involved in  
7 the asset-management business really since 2007? 09:35:28

8 A. Not directly working for the asset-management  
9 business, but in almost every position that I worked in  
10 we had generally received funding in one form or another  
11 from people in the investment-management business. As  
12 an example, in the Africa Israel case many co-investors  
13 in transactions that we were involved in; therefore, I  
14 had to negotiate with, were indeed defined benefit 09:35:59  
15 pension plans, not so much defined contribution but  
16 defined pension plans. So my involvement with the  
17 pension community and pension market was extensive  
18 during those years even without being actually employed  
19 by the asset-management industry.

20 Q. You resigned your employment with Bear Stearns; 09:36:28  
21 correct?

22 A. I did, yes.

23 Q. Were you told that you either needed to resign  
24 or that your employment would be terminated?

25 A. No, no. They specifically wanted me to stay,

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1 reasons for which might be an interesting issue, but I  
2 chose to leave on my own accord. I was not asked to  
3 leave.

4 Q. And you were the chairman and chief executive  
5 of the asset management that lost billions of dollars in 09:36:59  
6 connection with some of the specific funds that Bear  
7 Stearns was managing; correct?

8 A. They were two specific hedge funds that, as  
9 they say, hit the wall in the beginning of the, let's  
10 call it, liquidity crisis, mortgage bank security  
11 crisis. It took large losses. When I left the firm, I  
12 would say the losses were in the range of about 09:37:27  
13 \$1.5 billion.

14 Q. And while you were still there, both of those  
15 funds actually had to file for bankruptcy; correct?

16 A. I don't remember the exact date of the filing  
17 for bankruptcy, but my guess is they filed at some point  
18 after I left my position because I stayed with Bear  
19 Stearns for several months, call it six months after I  
20 left as head of asset management. So I believe the  
21 filing took place while I was still employed by Bear 09:38:00  
22 Stearns, yes.

23 Q. Did Bear Stearns manage any target date funds?

24 A. No.

25 Q. Did it offer any target date funds in the

Page 31

1 marketplace generally?

2 A. No.

3 Q. And am I correct that you while you were at 09:38:28  
4 Bear Stearns you had no experience with any target date  
5 funds?

6 A. No. That's not true. We -- As part of the  
7 ongoing mutual fund effort, we spent a lot of time  
8 looking into different areas, target date funding one,  
9 ETFs being another. We spent a lot of time in our -- in  
10 our sort of planning purposes looking at different ideas 09:38:58  
11 of getting involved, but we did not ultimately offer  
12 any.

13 Q. And so when you were at Bear Stearns, you  
14 didn't spend any time evaluating the performance of any  
15 target date funds to see whether they were reasonable  
16 investments or not reasonable investments?

17 A. Well, as part of the process of deciding  
18 whether to go into the market, we looked at competitive  
19 funds on a regular basis and examined their performance 09:39:28  
20 and how people were building those products to offer  
21 into the defined contribution market, so I would say  
22 there was an element of evaluation involved, yes.

23 Q. Do you recall evaluating the Fidelity Freedom  
24 Funds?

25 A. Not specifically, no.

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1 Q. Do you recall evaluating any target date funds?

2 A. Again, the specificity eludes me at this point  
3 in time. That was too long ago, but we did indeed look 09:39:59  
4 at a number of different funds.

5 Q. And do you recall how many target date fund  
6 families existed at the time?

7 A. No, not specifically.

8 Q. And do you recall what criteria you were using  
9 to evaluate the target date funds that you looked at  
10 when you were at Bear Stearns?

11 A. I recall looking at these funds using a series 09:40:28  
12 of different methodologies, yes.

13 Q. Do you recall what the methodologies were?

14 A. Sure. I mean, I recall looking at the -- Let's  
15 call it the various risk characteristics. I recall  
16 looking at the glide path issues of the different  
17 vintages. I recall looking at the various blends of 09:41:01  
18 instruments to be used in those funds. I recall looking  
19 at different Sharpe ratios, Alpha calculations,  
20 information ratios, Sortino ratios, all different sort 09:41:26  
21 of measurement criteria.

22 Q. Do you remember specifically looking at with  
23 respect to target date funds in the 2003 to 2007 time  
24 frame, looking at Sharpe ratios, Alpha, Sortino ratios;  
25 correct?

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1 A. Yes.

2 Q. And you recall looking at glide path issues  
3 with respect to target date funds in the 2003 to 2007  
4 time period? 09:41:59

5 A. Yes. I think one of the -- one of the things I  
6 will mention is that, you know, lifestyle funds was  
7 something that was very similar to target date funds, so  
8 I guess I would throw lifestyle funds into the same  
9 category as target date funds. These were different  
10 versions of the same fundamental product in terms of  
11 offering PC participants mechanisms in terms of 09:42:27  
12 glide-path-driven investment approach.

13 Q. Do you know who the consultant was, if there  
14 was one, for the Bear Stearns 401K plan?

15 A. I don't recall.

16 Q. Do you know if there was one?

17 A. I'm sure there was, but I don't recall who it  
18 was.

19 Q. And do you know who was on the committee for 09:42:56  
20 the Bear Stearns 401K plan to evaluate the investment  
21 options in that plan?

22 A. I don't know specifically. But again, I knew  
23 all of the senior people in the firm, so I could  
24 probably make an educated guess.

25 Q. I don't need you to guess.

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1           I understand you might know from amongst whom those  
2       people might be, but you don't know who was on the  
3       committee for the 401K plan for Bear Stearns to evaluate 09:43:28  
4       the investment options in that plan?

5           A. No.

6           Q. The people that you know who were the leaders  
7       of Bear Stearns you know were smart, thoughtful, and  
8       thorough people?

9           A. Yes.

10          Q. Knowledgeable about investments?

11          A. Yes.

12          Q. And do you know the criteria that they utilized  
13       when evaluating the funds that were in the Bear Stearns  
14       401K plan?

15          A. Not specifically, no.

09:43:59

16          Q. Do you know generally?

17          A. Yes, generally.

18          Q. Tell me.

19          A. Well, they would look at risk-return issues.

20       They would look at different ratios. They would look at  
21       different benchmark performance tracking. They would  
22       look at tracking error issues when it comes to passive  
23       sums. They would look at the array that was being  
24       offered to make sure it was a fulsome array. They would 09:44:30  
25       look at all of what I would call normal monitoring and

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1 tracking processes that one would use to track a  
2 portfolio of investments.

3 Q. Do you think the Bear Stearns fiduciaries would  
4 have looked at all of -- did you say normal things?

5 A. Normal investment criteria. 09:44:59

6 Q. And did you understand that the Bear Stearns  
7 fiduciaries would remove investment options from that  
8 plan if they thought they were no longer appropriate  
9 choices for plan participants?

10 A. Yes.

11 Q. In paragraph 31 of your report, you articulate  
12 a set of criteria to use when evaluating investment  
13 options; correct?

14 A. Can I look at my report? 09:45:29

15 Q. Yeah.

16 A. Anywhere specifically in 31?

17 Q. Paragraph A, B, C, and D and then E. 09:45:58

18 A. Okay. Would you like me to read through these?

19 Q. I mean, you could read through them yourself.

20 You don't need to read them out loud.

21 A. Yeah. That's what I meant.

22 Q. Sure. 09:46:21

23 (Pause in the proceedings.)

24 THE WITNESS: Okay. I've reviewed it.

25 MR. BLUMENFELD:

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1           Q. My question was, in paragraph 31 you describe  
2           the monitoring criteria for investment options in a  
3           defined contribution plan; correct?

4           A. I do. And this is specifically referencing  
5           this plan, and it specifically references the criteria      09:46:58  
6           that are described in the IPS.

7           Q. Okay.

8           That's a good segue.

9           Is it your opinion in paragraph 31 that these are  
10          criteria that apply to the Quanta plan but that don't  
11          apply to other defined contribution plans?

12          A. I know they apply to the Quanta plan. Each  
13          plan is different, so I can't respond as to whether they   09:47:26  
14          applied to other plans or not. They're fairly generic,  
15          in my opinion. There's nothing about them that makes  
16          them 100 percent unique to the Quanta plan. They're  
17          similar to other criteria I have seen applied to similar  
18          plans. I mean, they all have benchmarks. They all have  
19          the same kind of ratio examination, the Alphas and the      09:47:55  
20          information ratios, and the Sharpe ratios and asset size  
21          and that sort of thing and peer group rankings. So it's  
22          similar to other plans, but I can't state specifically  
23          if they should be applied to every other plan. Every  
24          plan is unique.

25          Q. Okay.

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1           And so you're saying that you applied the  
2 monitoring criteria you described in paragraph 31 based   09:48:27  
3 on the "Investment Policy Statement" that Quanta had in  
4 connection with their plan; correct?

5           A. Correct.

6           Q. Okay.

7           You also say, though, in your report that -- in  
8 paragraph 29 that these are monitoring criteria that you  
9 have used and applied throughout your career.

10          A. That's correct.

11          Q. Okay.

12          So it's not just specific to the Quanta plan.

13          These are the criteria that you have seen and used  
14 throughout your career at least?                                   09:48:58

15          A. Yes.

16          MR. BERIN: Object to the form.

17          MR. BLUMENFELD:

18          Q. And in paragraph 31-E you also define the  
19 framework that you're talking about as being customary  
20 in the retirement industry.

21          A. That's correct.

22          Q. So is it your opinion that plan fiduciaries   09:49:30  
23 customarily use the same monitoring criteria that you're  
24 describing in paragraph 31?

25          A. Well, as I said, every plan is unique. I do

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1 believe that this is not an unusual framework and that  
2 it is more typical than not to what you see in the  
3 investment area.

09:49:58

4 Q. Okay.

5 Are you aware of any other plans that used the  
6 criteria that you talk about in paragraph 31 in the way  
7 you described it in paragraph 31 aside from the Quanta  
8 plan?

9 A. Well, this is not dissimilar. Just to take one  
10 that you've already mentioned, it's not totally  
11 dissimilar to what is used at Genworth.

12 Q. When you say "not dissimilar from what was used 09:50:26  
13 at Genworth," is that the only one you can think of?

14 A. I have worked with so many different defined  
15 contribution plans over my career, all I'm going to do  
16 is specify that this is similar to what I've seen in  
17 many plans.

18 Q. Okay.

19 When you say it's similar to what you saw in  
20 Genworth, are you talking about your opinions in  
21 Genworth or what the plan fiduciaries for the Genworth 09:50:56  
22 plan were doing?

23 A. I'm talking about the framework used for  
24 evaluating funds in the Genworth plan.

25 Q. What Genworth used or what you say Genworth

Page 39

1 should have used?

2 A. What -- what Genworth used and -- and what my  
3 experience tells me is normal to be used.

4 Q. Okay.

5 So you believe that the plan fiduciaries of the 09:51:29  
6 Genworth plan used the same framework that you describe  
7 as a reasonable framework in paragraph 31 of your  
8 report?

9 MR. BERIN: Object to the form of the question.

10 THE WITNESS: They're -- I don't want to  
11 characterize it as exactly the same. My sort of  
12 overriding comment is that every plan is different.

13 What I'm saying is that this framework is not dissimilar 09:51:56  
14 to what is used elsewhere like in Genworth.

15 MR. BLUMENFELD:

16 Q. And I just want to be clear.

17 When you say "used elsewhere as in Genworth," you  
18 offered opinions in the Genworth case; correct?

19 A. Yes.

20 Q. And you said the Genworth plan fiduciaries  
21 essentially made bad investment decisions by maintaining  
22 the BlackRock target date funds in that plan; correct?

23 A. Yes.

24 Q. Are you saying that what you described in 09:52:28  
25 paragraph 31 of your report in this case here is similar

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1 to what you described in the Genworth case or similar to  
2 what the Genworth plan fiduciaries actually did in the  
3 Genworth case?

4 MR. BERIN: Object to the form.

5 THE WITNESS: You're getting into an area of  
6 specificity in comparing the situations that I'm not  
7 comfortable agreeing with. What I'm saying is that the  
8 general framework used to evaluate -- meaning, using 09:52:56  
9 benchmarks, using ratio analysis over a period of time,  
10 using three- and five-year averaging, those are all  
11 similar from what I've seen elsewhere and what I saw in  
12 Genworth.

13 MR. BLUMENFELD:

14 Q. Okay.

15 We'll come back to this.

16 Did Beehive Ventures offer a defined contribution 09:53:30  
17 plan?

18 A. No.

19 Q. Did it offer any target date funds?

20 A. No.

21 Q. Did Deutsche Asset Management have a 401K plan?

22 A. Yes.

23 Q. Were you in it?

24 A. Yes.

25 Q. Were you a fiduciary of the Deutsche Asset 401K

Page 41

1 plan?

2 A. Yes.

3 Q. You were responsible for selecting the 09:53:58  
4 investment options for the Deutsche 401K plan?

5 A. No, I wasn't involved. But because I ran  
6 Deutsche Asset Management, I was, I believe, an  
7 ex officio member of that committee.

8 Q. What does it mean that you were an ex officio  
9 member, but you weren't involved?

10 A. No, I didn't say that. I never used those 09:54:29  
11 words. What I said was I was an ex officio member. I  
12 think you know what an "ex officio member" is; right?

13 Q. Tell me.

14 A. It means that you sit in on the committee  
15 meetings and are there to advise the committee on  
16 various issues having to do with the investments.

17 Q. Were you a voting member?

18 A. No.

19 Q. Okay.

20 Do you recall what investment options Deutsche -- 09:54:59  
21 Deutsche Asset Management is part of Deutsche Bank;  
22 correct?

23 A. Correct.

24 Q. And the 401K plan actually was the Deutsche  
25 Bank 401K plan; right?

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1 A. Correct.

2 Q. And do you remember the investment options that  
3 were available in the Deutsche Bank 401K plan when you  
4 were there?

5 A. No, not specifically.

6 Q. You were there for less than two years;  
7 correct?

8 A. Correct.

9 Q. How many meetings did you go to of the Deutsche 09:55:26  
10 Bank 401K plan committee?

11 A. I don't remember.

12 Q. Do you remember if it was more than one?

13 A. Yes.

14 Q. But you don't remember any of the investment  
15 options?

16 A. No. We were -- we were merging the investment  
17 operations of four major investment companies in the US.

18 We had the Bankers Trust Company plans and funds, which

19 had the Alex Brown plans and funds. We had the 09:55:57

20 Morgan Greenfell and Deutsche Bank plans and funds. So

21 it was a rather complicated integration exercise, so I

22 don't remember the specific funds.

23 Q. You don't remember any of them at all for any  
24 of those plans?

25 A. Not specifically to reference at this moment in

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1 time, no.

2 Q. Did the Deutsche Bank plan have target date  
3 funds? 09:56:29

4 A. We had lifestyle funds.

5 Q. And what's a "lifestyle fund"?

6 A. It's like a target date fund. Like I said,  
7 lifestyle funds have generally evolved into target date  
8 funds, but the lifestyle funds were basically very  
9 similar except not specifically linked to a retirement  
10 date the way target date funds are. They were sort of  
11 stage-of-life funds. 09:56:59

12 Q. More conservative, more aggressive, but they  
13 stayed that way; correct?

14 A. They were to be used by participants who were  
15 in the various stages of their life, the early stage,  
16 the middle stage, the later stage, the post retirement  
17 stage. That's what lifestyle funds generally provided.

18 And again, they're very similar, the concept is very 09:57:26  
19 similar in glide path construction to target date funds,  
20 but the industry has evolved. And sort of it's like  
21 Betamax versus the VHS; right? Betamax was a perfectly  
22 valid technology, but VHS won the marketing battle, and  
23 everybody became VHS oriented. Well, everybody became  
24 target date fund oriented. There may still be some 09:57:57  
25 residual lifestyle funds out there, but again, I'm not

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1 aware of them.

2 Q. Do you remember what lifestyle funds the  
3 Deutsche Bank 401K plan offered?

4 A. We offered a full suite of 401 plans for the  
5 entire lifestyle parade that was available. These were  
6 the ones that came out of Bankers Trust.

7 Q. Were they Bankers Trust lifestyle funds?

8 A. Well, I think they started as Bankers Trust 09:58:29  
9 lifestyle funds. But again, we're talking about a  
10 series of mergers that occurred and the first merger  
11 that occurred with Alex Brown. We picked up a lot of  
12 mutual funds in the Alex Brown merger. That was sort of  
13 between '97 and '99. And then from '99 to 2001 we went  
14 through the merger with Deutsche Bank who had also  
15 recently merged with Morgan Greenfell just as we had 09:58:59  
16 merged with Alex Brown. So it's a collage of four  
17 different investment managers that I was responsible for  
18 integrating.

19 Q. So I thought you left Deutsche in December of  
20 2000.

21 A. I stayed on as a consultant for a period of  
22 time. I said 2001. I believe it went into the early  
23 part of 2001.

24 Q. Okay.

25 Did Bankers Trust offer any target date funds? 09:59:30

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1 A. No. We had lifestyle funds.

2 Q. Aside from your time at Deutsche Bank, have you  
3 ever attended a 401K defined contribution committee  
4 meeting to review, monitor, select investment options?

5 A. Did you say "except" for my time?

6 Q. Correct.

7 A. I attended them while at Bankers Trust and  
8 while at Deutsche Asset Management. I did not attend 09:59:59  
9 any when I was running Bear Stearns Asset Management.

10 Q. Okay.

11 So am I correct that you haven't attended any  
12 committee meetings since early 2001?

13 A. Yes. You're correct.

14 Q. Okay.

15 Have you ever served as a consultant for a defined  
16 contribution plan?

17 A. We had consultants in all of my 10:00:27  
18 investment-management operations. I was not at  
19 consultant level, but I had teams of consultants who  
20 worked for me, including at Bear Stearns Asset  
21 Management.

22 Q. Did the consultants that were at Bear Stearns  
23 Asset Management serve as consultants for defined  
24 contribution plans making recommendations about what  
25 mutual funds to include in their plans? 10:00:59

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1 A. I believe so, yes.

2 Q. When you say you "believe," so you're not sure  
3 because you weren't in the role?

4 A. I was responsible for it. They reported to me.  
5 I monitored their performance. I knew generally what  
6 they were doing, who their clients were at the time, and  
7 I just don't recall whether or not they had defined  
8 contribution plans, but I believe they did.

9 Q. The consultants that you're describing, was it 10:01:27  
10 their job to try to sell Deutsche Bank mutual funds?

11 A. Everything that we were -- well, you said  
12 Deutsche Bank -- right? -- as opposed to Bear Stearns.  
13 Everything that we did in the asset-management area was  
14 to serve our institutional or client base, and as such  
15 the consultants had to maintain somewhat of an 10:02:01  
16 arm's-length approach in providing objective  
17 consultation and advice that did not push proprietary  
18 product. So we maintained our own sort of version of  
19 walls such that their compensation and their evaluation  
20 was based on the satisfaction of their clients in 10:02:28  
21 providing objective advice, not on their pushing or  
22 selling proprietary products.

23 Q. All right.

24 Let's go back to paragraph 31 of your report, if  
25 you would. 10:02:55

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1 A. Okay.

2 Q. In paragraph 31-B of your report, could you  
3 look at that?

4 A. Okay.

5 Q. You say that you were going to "Review the  
6 Freedom Funds returns both by vintage and in the  
7 aggregate versus the S&P indices such that when more 10:03:28  
8 than half of the vintages with a performance history  
9 generated three and/or five year returns that failed to  
10 beat the relative vintages of the S&P indices, the suite  
11 is flagged and placed on watch for greater scrutiny."

12 Do you see that?

13 A. Yes.

14 Q. So first question I have, you say in there  
15 "and," slash, "or."

16 Do you see that?

17 A. "And/or," yes. 10:03:59

18 Q. And now, it's not clear to me whether you mean  
19 that if more than half of the vintages on a three-year  
20 basis fail to beat the relevant indices for five years  
21 the suite is flagged and placed on watch or whether you  
22 require underperformance on a three-year basis and a  
23 five-year basis before a fund is placed on watch.

24 A. Okay. What's your question?

25 Q. Which is it? 10:04:30

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1                   A. The way the IPS is written, I believe, is to  
2 say that it's, you know, three years or longer, so I  
3 guess the correct interpretation would be "or," but, you  
4 know, we looked at that issue in all the analysis we  
5 did. We looked at how the three-year and the five-year  
6 returns differed, and in some cases both three- and         10:04:58  
7 five-year returns indicated failure and in some  
8 instances one or the other, three- or five-years  
9 indicated failure. Both of them, I believe, constitute  
10 a failure for the IPS.

11                  Q. And so three-year underperformance or five-year  
12 underperformance in your mind constitutes a failure and  
13 therefore requires putting it on watch?                         10:05:29

14                  A. Yes.

15                  Q. Okay.

16                  It's not limited to circumstances where both the  
17 three-year and the five-year underperformed?

18                  A. I don't believe it is, no.

19                  Q. Okay.

20                  Now, you mentioned the "Investment Policy  
21 Statement" for Quanta, and we'll look at that in a few  
22 minutes.

23                  But aside from the "Investment Policy Statement,"  
24 is there some other basis for the opinion you expressed  
25 in paragraph 31-B?

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1           A. The other basis for that opinion would be, like 10:06:00  
2 I said, my experience over the years of working with  
3 defined contribution plans.

4           Q. So that's good, and I'm not surprised to hear  
5 you say that.

6           Can you identify for me any plans that utilize the  
7 framework that you described in paragraph 31-B for  
8 deciding whether a fund needs to be placed on watch  
9 list? 10:06:28

10          A. I can -- no, I can't -- I can't give you  
11 specific plans. I know that three- and five-year  
12 averaging is used in many plans. I believe that's the  
13 case with Genworth, and I believe that's the case even  
14 with Prudential. Those are the most recent ones I've  
15 been looking at and working with, but I've seen many  
16 plans over the years that use three- and five-year 10:06:59  
17 averaging because it's a prudent way to evaluate a  
18 performance over a longer period of time than looking at  
19 it on a quarterly basis.

20          Q. Okay.

21          You understand there's a difference between saying  
22 that a plan fiduciary should look at three-year  
23 performance and looking at five-year performance.

24          There's a difference between that and saying that if a  
25 fund underperforms on a three-year basis or a five-year 10:07:27

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1 basis it has to be put on watch.

2 Correct?

3 A. Well, the IPS in this instance, you know, has a  
4 separate one or two pages in it dedicated to the process  
5 for putting things on monitor, alert, or watch. We can  
6 call it similar phraseology. That would then have to be  
7 carefully monitored and eventually terminated if they 10:07:55  
8 did not improve. So that procedure is usually spelled  
9 out in the IPS as it certainly is here in the case of  
10 Quanta.

11 Q. Mr. Marin, my question was not about the  
12 "Investment Policy Statement." My question was about  
13 your opinion.

14 You know lots of plans look at three-year  
15 performance, and lots of plans look at five-year  
16 performance, but you can't identify any plans that put a 10:08:28  
17 fund on watch because of underperformance against a  
18 benchmark over a three-year time period or against a  
19 benchmark over a five-year time period; correct?

20 MR. BERIN: Object to form.

21 THE WITNESS: What I'm telling you is that I've  
22 seen many plans that do that. I can't name the plans  
23 for you.

24 MR. BLUMENFELD:

25 Q. Okay.

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1           Can you name the time period?

2           A. The three- and five-year time period?

3           Q. No, the time period you're talking about when  
4           you are aware of a plan that you can't identify that did 10:09:00  
5           this.

6           A. Anytime in the last 30 years.

7           Q. Okay.

8           Can you identify a plan in the last ten years that  
9           did this?

10          A. I can't identify a specific plan.

11          Q. Okay.

12          Can you identify a plan in last 20 years that did  
13          this?

14          A. No.

15          Q. Okay.

16          You also say that you're benchmarking the 10:09:27  
17          performance here against the S&P indices; correct?

18          A. I'm benchmarking it against the benchmarks that  
19          the IPS has specified, yes.

20          Q. And is the reason that you did that because the  
21          IPS specified it?

22          A. Well, that is the primary reason.

23          The secondary reason is that it is very normal in  
24          the industry to use the S&P index for any number of  
25          evaluations as a benchmark, especially obviously one 10:09:58

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1       that involves heavy component of equities, all cap  
2       equities.

3           Q. What S&P indices do you think you're using in  
4       paragraph 31-B of your report?

5           A. I'm using the S&P index that was provided by  
6       the investment consultant quarterly reports.

7           Q. Okay.

8           You believe that the quarterly reports that were 10:10:28  
9       being provided to the folks at Quanta contained useful  
10      information in evaluating the investment options?

11       MR. BERIN: Object to the form of the question.

12       THE WITNESS: I'm -- I'm presuming that the  
13      consultant reports from Ascend during the time period  
14      that I'm talking about here contained accurate  
15      information that was used to monitor these  
16      investments.

17       MR. BLUMENFELD:

18       Q. Okay. 10:11:00

19       Do you remember the S&P index that you're  
20      describing in paragraph 31-B and that you use in your  
21      report?

22       A. What -- I don't know what you mean by do I  
23      remember. Do I remember that it was the S&P index? I  
24      remember it's the one that's used in the Ascend  
25      quarterly report, and that is the index that was used

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1 for this comparison because that's what the IPS 10:11:27  
2 indicated.

3 Q. Okay.

4 Is the only reason that you used the S&P index that  
5 you described in paragraph 31-B because it was disclosed  
6 in the "Investment Policy Statement"?

7 MR. BERIN: Object to form.

8 THE WITNESS: Well, I guess I have to repeat what I  
9 said before. What I said before was that that was the  
10 primary reason we used it, but I also said that that is  
11 a very normal index to use as a benchmark, and therefore 10:11:55  
12 it strikes me as the appropriate benchmark to use. But  
13 it was specified in the IPS, and that was the driving  
14 criteria.

15 MR. BLUMENFELD:

16 Q. So in paragraph 31-B you're describing the S&P  
17 index for target date funds; correct?

18 A. Yes.

19 Q. How prevalent is the S&P target date index for  
20 evaluating target date funds? 10:12:28

21 A. I've seen it many times.

22 Q. Okay.

23 Can you identify any plans that have used it?

24 A. Well, I guess I'm going to say Genworth because  
25 I believe they used it.

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1 Q. Okay.

2 Any others?

3 A. Not off the top of my head, no.

4 Q. Am I right, Mr. Marin, that the criteria you 10:13:08  
5 articulate in 31-B of your report doesn't depend on  
6 whether a fund underperforms the benchmark by one basis  
7 point or a hundred basis points or a thousand basis  
8 points, they all constitute a failure?

9 A. The IPS in Quanta does not quantify a threshold 10:13:30  
10 amount. Other plan IPSes do. In this case they don't,  
11 so it would certainly be in the qualitative factors that  
12 one would evaluate when looking at these reports to see  
13 the magnitude. But the more quantitative aspect of this 10:13:52  
14 is just to see if it breached the levels by failing to  
15 equal or exceed the benchmark level, so a negative  
16 number, whether it was one basis point or a hundred  
17 basis points, would get recorded, and it would be shown  
18 as a negative number. It certainly is reasonable and  
19 expected that when you're evaluating that that if it  
20 was -- if it underperformed by one basis point that may 10:14:29  
21 not be considered material enough to warrant an action,  
22 but that wasn't the case here.

23 Q. I'm sorry.

24 What wasn't the case here?

25 A. That it was that low.

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1 Q. Okay.

2 Did you evaluate whether the difference in  
3 performance between the Freedom Funds which charge fees  
4 and the S&P target date index which didn't have fees was  
5 based on the amount of the fees?

6 A. We did every analysis, net of fees as was 10:14:59  
7 indicated in the IPS, and we used the numbers in the  
8 quarterly reports provided by the consultant to do their  
9 comparisons as provided to the committee, so we mimicked  
10 the approach used by the consultant to do the  
11 evaluation.

12 Q. The S&P target date index that you utilized and 10:15:26  
13 that the consultant utilized doesn't account for fees  
14 because there are no fees on the index; correct?

15 A. You know, I'd have to look and see the  
16 specificities of the target date fund indices, but my  
17 understanding was that it was a net of fees number,  
18 whether fees were charged on the index or not.

19 Q. What's the basis for your understanding that 10:16:00  
20 that was a net of fees number on the S&P target date  
21 index?

22 A. The fact that my analyst team told me that was  
23 the case, and the consultant used it to do the  
24 comparison.

25 Q. Okay.

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1 Who on your analyst team told you that that was the  
2 case?

3 A. I have a team of people that work with me to do 10:16:27  
4 the analytics underlying these reports.

5 Q. Right. I'm asking who.

6 A. Oh, there are several, but specifically  
7 Julio -- I want to say Sanchomonte. It's an Italian  
8 name.

9 Q. Is he an employee of SEDA?

10 A. Yes.

11 Q. Does that matter to your opinions whether the 10:17:00  
12 S&P target date index that you utilized accounted for  
13 fees or not?

14 A. It certainly matters, and we saw some reference  
15 to that in the rebuttal that the opposing witness,  
16 expert witness, provided us. So we did go back and  
17 check all of our numbers to see whether or not they had  
18 been done in conformity with with the IPS standards and 10:17:29  
19 that they were indeed net of fees.

20 Q. Before we go on to paragraph 31-C, why don't we  
21 go look at the "Investment Policy Statement."

22 MR. BLUMENFELD: Mat, can you upload that?

23 MR. McKENNA: Yes. One moment.

24 MR. BLUMENFELD:

25 Q. Mr. Marin, we're going to switch in a minute to

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1       the "Investment Policy Statement." We've been going           10:17:59  
2       over after hour.

3           Would you like to take a break now?

4           A. I'm fine doing whatever you and my attorney  
5       prefer.

6           MR. BERIN: I'm more concerned about Mr. Marin's  
7       comfort, so I'm happy to press on a bit longer.

8           MR. BLUMENFELD: Bonnie, you're okay?

9           THE REPORTER: Okay.

10          THE WITNESS: I guess I'm trying to figure out --  
11       oh, there it is.

12          Is this Exhibit 002?                                   10:18:29

13          MR. BLUMENFELD:

14          Q. It is.

15          A. Okay. So I'm going to download this, and then  
16       I've got to go find it. Okay. I think I've got it.  
17       Okay. I have it in front of me.

18          Q. Great.

19          Mr. Marin you should have in front of you what's  
20       been marked as Marin Deposition Exhibit 2; correct?

21          A. Correct.

22          Q. And this is the October 2015 "Investment Policy   10:18:57  
23       Statement" from Quanta?

24          A. Correct.

25          Q. It's the "Investment Policy Statement" you just

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1 referred to and that you utilized in preparing your  
2 report?

3 A. Yes.

4 Q. Can you go to -- It's page, I believe, 13 of 18  
5 of the PDF. Sorry. I was mistaken. It's page 14 of 18 10:19:30  
6 of the PDF.

7 A. Is this the one that says "Investment  
8 Objectives, Criteria for Review and Review Processes,  
9 Investment Watch List Process"?

10 Q. That's the one.

11 A. Okay. I have it up.

12 Q. And this is the provision you were talking  
13 about in the IPS that describes when an investment would  
14 be placed on the watch list; correct? 10:19:57

15 A. Correct.

16 Q. And I want to be clear. So if you can go back  
17 to paragraph 31-B of your report, you say that a suite  
18 is flagged and placed on watch for greater scrutiny.

19 That's in conformity with the "Investment Policy  
20 Statement"; correct?

21 A. Yes.

22 Q. Okay.

23 Now, so first am I correct that you evaluated the  
24 "Investment Policy Statement" and determined that the  
25 criteria that's articulated in it are reasonable

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1 criteria?

2 MR. BERIN: Object to the form.

10:20:30

3 THE WITNESS: I have no reason to find them  
4 unreasonable.

5 MR. BLUMENFELD:

6 Q. Okay. Thank you.

7 So can you point to me the criteria that talked  
8 about performance against a benchmark as being criteria  
9 for putting a fund on the watch list?

10 A. Okay. Well, let's take a quick look here. I 10:20:55  
11 can't just look at this one slide. I have to look back  
12 at the quantitative factors.

13 So on page -- Let's see what number is that page,  
14 11 -- "Competitive and Consistent Performance Measured  
15 Against the Appropriate Benchmark." 10:21:29

16 Q. Mr. Marin, let me just pause you for a minute.  
17 If you want to read something to yourself, that's fine.  
18 If you want to read something out loud, that's okay, but  
19 just direct us to the right page number so we can follow  
20 along.

21 A. That's why I said page 11.

22 Q. Is that internal page 11?

23 A. No. It's 11-18.

24 Q. Okay.

25 That's under the heading "Selection of Investment

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1 Options"; correct?

2 A. Correct. This lists the quantitative factors, 10:21:58  
3 "Based on the investment's --" the second bullet point,  
4 "Based on the investment's objective, investment style,  
5 growth versus value, and market capitalization, large  
6 market versus small market, an appropriate benchmark  
7 should be used for relative investment performance  
8 evaluation. A list of the benchmarks to be used for the  
9 comparison to the plan's investment options may be found  
10 in Appendix A."

11 Q. This page, sir, is the page about describing  
12 how they select investment options; correct? 10:22:27

13 A. That is correct.

14 Q. Okay.

15 A. But I consider that relevant to monitoring as  
16 well --

17 Q. Okay.

18 A. -- because this is the only place -- I mean, we  
19 can all sort of question why Ascend chose to organize  
20 its IPS the way it did, but they have the listing of the  
21 qualitative and quantitative factors on pages 11 and 12  
22 of 18 are shown under "Selection," and then page 13 says 10:22:59  
23 "Performance Evaluation Criteria" and then the watch  
24 list.

25 So if we look at "Performance Evaluation Criteria,"

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1       that certainly could apply to both selection and  
2       monitoring since monitoring has everything to do with  
3       the performance evaluation criteria.

4           So let's see. I guess I'm losing sight of your       10:23:28  
5       question. Why don't you give me your question again.

6           Q. My question, sir, was, you describe in  
7       paragraph 31-B of your report that a fund should be  
8       placed on watch for greater scrutiny if it underperforms  
9       the S&P target date index benchmark on a three-year or  
10       five-year basis.

11           My question, sir, was, where in the IPS does it say  
12       that a fund is supposed to be placed on watch list if       10:23:57  
13       that happens?

14           A. Okay. Very good. Let's see. Okay. So  
15       under -- on page 13, third paragraph down, it talks  
16       about the way in which performance is measured and that  
17       the performance will be measured net of fees.       10:24:27

18           And then we move up to the next page, it says that  
19       the "option's net performance falls below the median of  
20       its peer group's three, five. Adjusted Alpha falls  
21       below the peer group's median. The information  
22       ratio --" which is indeed a comparison against the  
23       benchmark, so "consistency of performance as measured by   10:24:59  
24       the fund's information ratio is negative as measured on  
25       a three-, five-, and ten-year basis."

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1                   So effectively the capturing of the benchmark  
2 analysis takes place in the third bullet point of  
3 page 14 of 18.

4                   Q. Is that it?

5                   A. Yes, I believe so.

6                   Q. Okay. Thank you.                                  10:25:29

7                   Now let's go back to your report.

8                   A. Correct.

9                   Q. Do you have that in front of you?

10                  A. I do.

11                  Q. Paragraph 31-C is where you describe the test  
12 related to the information ratio; correct?

13                  A. Correct.

14                  Q. So are you saying that 31-B and 31-C are  
15 essentially the same thing?

16                  A. They're not entirely the same. There's a  
17 slight difference. The information ratio tracks the                          10:25:57  
18 differential in the fund's performance against the  
19 benchmark as referenced by the tracking error, so it  
20 looks at effectively active risk, but the tracking  
21 against the benchmark, which is what's covered in "B,"  
22 is a subset, if you will, of what happens in "C."                          10:26:28

23                  Q. Okay.

24                  So what you describe in paragraph 31-B isn't  
25 actually called for in the "Investment Policy Statement"

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1 at all when it comes to the watch list criteria;  
2 correct?

3 A. I believe it is called for, yes.

4 Q. Okay.

5 Let's go back to the paragraph we just looked at or  
6 the page we just looked at in the "Investment Policy  
7 Statement." You said it was in the bullet point under  
8 the information ratio.

10:26:56

9 A. Well, you can't calculate the information ratio  
10 without doing the comparison of the fund performance  
11 against the benchmark. So like I said, "B" is a subset;  
12 of what has to be done for the calculation of the  
13 information ratio, and it is therefore implied in this  
14 watch list process that one needs to do the relative  
15 tracking of the performance against the benchmark.

10:27:29

16 Q. Okay.

17 What if a fund passed the criteria that you  
18 described in paragraph 31-C?

19 A. Well, that's a hypothetical, and I guess what I  
20 would say is that is not what occurred here. The  
21 information ratio produced results that were negative,  
22 and they produced that negative result predominantly  
23 because of the failure against the performance against  
24 the benchmark.

10:27:59

25 Q. Okay.

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1           Would you agree with me at least that the criteria  
2        you described in paragraph 31-B is not expressly  
3        included in the monitoring criteria that's set forth in  
4        the "Investment Policy Statement"?

5           A. No. I would say it's -- it's absolutely           10:28:30  
6        imbedded in what's shown as the watch list process.

7           My -- I am sure that if you -- if you asked any           10:28:58  
8        investment professional is it normal to measure  
9        performance against the benchmark and track  
10      underperformance, my answer is yes. The best evidence  
11      of that is that the quarterly reports from Ascend           10:28:58  
12      displayed in exactly that way.

13           Q. You're changing your answer from the question  
14        that I asked you, though, Mr. Marin. I'm talking about  
15        the criteria that you say you relied upon from the  
16        "Investment Policy Statement." If you want to say,  
17        Mr. Marin, that you think it's appropriate to do because  
18        it's what everybody does, that's fine, but you said you  
19        think it's appropriate to do because it's in the  
20        "Investment Policy Statement."

21           A. Yes.   10:29:27

22           MR. BERIN: Object to the form of the question.

23           THE WITNESS: And the reason I say it's in the  
24        "Investment Policy Statement" is, as I said, the  
25        "Investment Policy Statement" incorporates the

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1 evaluation against the benchmark in the indication of  
2 the use of the information ratio, and because they  
3 mandate in this -- in this IPS that the investment 10:29:56  
4 consultant is to track this, and the investment  
5 consultant provides quarterly reports that specifically  
6 track the performance against the benchmark, I think QED  
7 that says quite clearly that the IPS is intended to say 10:30:23  
8 that performance against the benchmark is to be  
9 tracked.

10 MR. BLUMENFELD:

11 Q. You understand, Mr. Marin, there's a difference  
12 between saying that performance against the benchmark  
13 should be tracked and what you articulate in  
14 paragraph 31-B, which is if you underperform the  
15 benchmark on a three-year basis or a five-year basis the  
16 fund is placed on watch; correct?

17 MR. BERIN: Object to the form.

18 THE WITNESS: I believe the IPS instructs the 10:30:57  
19 committee and its consultants to do exactly what I say  
20 in Section B.

21 MR. BLUMENFELD:

22 Q. Okay.

23 And that's based on the third bullet point in the  
24 investment watch list process provision of the  
25 "Investment Policy Statement"?

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1                   A. It's based on the entire "Investment Policy  
2 Statement," which is why if read in its entirety it is       10:31:24  
3 very clear that performance measurements and monitoring  
4 against the benchmark, which is indeed the industry  
5 norm, is called for.

6                   Q. Paragraph 31-C of your report --

7                   A. Yes.

8                   Q. -- you say that if an investment has a negative   10:32:02  
9 information ratio sign, it's supposed to be placed on  
10 the watch list according to the "Investment Policy  
11 Statement."

12                  A. Well, let's just -- May I read it aloud?

13                  Q. Paragraph 31-C?

14                  A. Yes.

15                  Q. If that's what you feel you need to do.

16                  A. Well, you're characterizing 31-C. I'd rather       10:32:27  
17 just read it, and then we can go with what it says. Is  
18 that all right?

19                  Q. Go ahead. Read it.

20                  A. "Review of the Freedom Funds' information ratio  
21 by vintage, such that when more than half of the  
22 vintages with a sufficient performance history generated  
23 a negative three- and/or five-year information ratio,  
24 the suite is flagged and placed on watch for greater  
25 scrutiny. The quality -- this quality, the information

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1 ratio bearing a negative sign, is recognized as a watch 10:32:59  
2 list standard in the IPS."

3 So what was your question?

4 Q. I guess my next question is, can you identify  
5 any plans that apply that criteria for putting a fund on  
6 watch?

7 A. Yeah, this one.

8 Q. Any others?

9 A. I'm not focused on others at this moment in  
10 time, so I can't tell you without having the IPSes of 10:33:28  
11 other funds in front of me, which ones have it. I can  
12 tell you that this one has it.

13 Q. Okay.

14 Now let's go back to the "Investment Policy  
15 Statement."

16 A. Okay.

17 Q. You have it in front of you?

18 A. I do.

19 Q. Let's go back to the investment watch list  
20 process.

21 A. Okay. That's 14 of 18.

22 Q. Page 14 of 18.

23 A. I've got it up.

24 Q. In the first paragraph there it says, "The 10:33:58  
25 committee may place an investment option on a," quote,

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1 "monitor," closed quote, "or," quote, "alert," closed  
2 quote, "status and conduct a thorough review and  
3 analysis of the investment option."

4 Did I read that correctly?

5 A. Yes.

6 Q. The next sentence says, "The committee may  
7 consider the following criteria when placing a fund on  
8 monitor or alert status"; correct?

9 A. Correct.

10 Q. It doesn't say that a fund is automatically 10:34:26  
placed on monitor or alert status or subject to watch if  
11 it hits on any of these criteria; correct?

12 A. That's correct.

13 Q. Okay.

14 And how many criteria are listed on this page?

15 A. Three, four, five -- nine.

16 Q. Okay.

17 How many did you evaluate in your report?

18 A. All nine.

19 Q. You evaluated all nine?

20 A. I evaluated all nine to prepare my report, yes.

21 Q. Do you discuss all nine of them in your report? 10:34:59

22 A. No, because some of them I either didn't come  
23 up as breaches, or there wasn't enough information to  
24 determine if there was a breach.

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1                   Q. So the fourth bullet point down on the  
2 monitoring criteria says, "There is a change in the  
3 professionals managing the portfolio."

4                   A. That's correct.

5                   Q. You don't discuss that in your report at all?

6                   A. I look at that information as part of the                 10:35:28  
7 review process, but I don't discuss it, no.

8                   Q. Okay.

9                   And you didn't conclude that there were any issues  
10 with respect to the Fidelity Freedom Funds and the  
11 change in the professionals managing the portfolio;  
12 correct?

13                  A. I don't discuss it, but I would have been aware  
14 that that had occurred if it had come up. For instance,  
15 when we did the review of alternative funds for                 10:35:59  
16 replacement, we had on our matrix information about how  
17 long the managers had been running those funds. It was  
18 also something that is visible on the deep dive reports  
19 that were provided by Ascend to the committee, so that's  
20 all an element or criteria that I was aware of when we         10:36:26  
21 were evaluating this issue to put it on monitor or  
22 alert.

23                  Q. And you don't identify in your materials  
24 considered any information about you looking at changes  
25 in the professionals managing the portfolio for the

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1 Fidelity Freedom Funds aside from the target date deep  
2 dives that the Quanta plan fiduciaries received;  
3 correct?

4 A. I identify all of the relevant materials that 10:36:57  
5 we used. The only exception to that is that when you  
6 review Morningstar data you're looking at a lot of data,  
7 but again, it's all consistent. I would have been aware  
8 had there been incremental breach due to a change of  
9 portfolio manager, and none of them appear to have  
10 happened with regard to the Fidelity Freedom Funds.

11 Q. And just so I understand -- meaning, you looked 10:37:27  
12 at all nine criteria when you evaluated the Fidelity  
13 Freedom Funds, and six of those criteria did not leave  
14 you to conclude that there was any reason to put the  
15 Fidelity Freedom Funds on a watch list, but three of  
16 them did?

17 A. The ones that I viewed as in breach were  
18 included in the report. The ones that I didn't view or  
19 I didn't have any information to indicate there was a 10:37:58  
20 breach were not put into that.

21 Q. You understand that the "Investment Policy  
22 Statement" doesn't say if any of these happen the fund  
23 should be placed on watch but says the committee is  
24 supposed to consider all of these; correct?

25 MR. BERIN: Object to the form.

1                   THE WITNESS: Considering them is exactly the way I  
2 approached the exercise.

3                   MR. BLUMENFELD:

4                   Q. And you think it's reasonable to consider all  
5 nine of these factors when you're evaluating investment  
6 options like the Fidelity Freedom Funds and the Quanta      10:38:28  
7 401K plan?

8                   MR. BERIN: Object to the form.

9                   THE WITNESS: Well, the way I would answer that is  
10 to use the very one that you highlight, a change in the  
11 professional managing the portfolio. That's a sort of a  
12 one-way binary issue. If there was a change in  
13 professionals, that might have been flagged as an issue.  
14 If there wasn't, it wasn't flagged as an issue.

15                   So if I didn't see any flags on six of these, and I    10:38:59  
16 did on three of them, my view is those three, which  
17 happen to be the first three, which happen to be the  
18 first three on the list, not that it specifies that  
19 those are in rank order of importance, but it's  
20 certainly implied that they are in rank order of  
21 importance because the quantitative ones listed first,  
22 just like the quantitative are listed first in the IPS,     10:39:27  
23 those are pretty darn important. And from my experience  
24 and history in this industry, those are the ones that  
25 cannot be ignored if they're breached.

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1                   Q. You're not offering the opinion in your report  
2                   that the Quanta plan fiduciaries were ignoring any of  
3                   these criteria, are you?

4                   A. I am not, no.

5                   Q. Okay.

6                   Let's go to the fifth one down. The fifth criteria  
7                   says, "There is a significant decrease in the investment 10:39:57  
8                   options. Assets for the investment options have not had  
9                   at least 75 million under management."

10                  Do you see that?

11                  A. Yes.

12                  Q. And that again was a criteria that was in the  
13                  "Investment Policy Statement" but that did not give you  
14                  any cause for concern with respect to the Fidelity  
15                  Freedom Funds; correct?

16                  MR. BERIN: Object to form.

17                  THE WITNESS: Correct.

18                  MR. BLUMENFELD:

19                  Q. Okay.

20                  The next one down is, "There is an indication that  
21                  the investment manager of the funds is deviating from  
22                  that manager's stated style and/or strategy." 10:40:27

23                  Did I read that correctly?

24                  A. You did.

25                  Q. Okay.

1           And that's a criteria that you considered in  
2           evaluating the Fidelity Freedom Funds and concluded  
3           there was no basis for saying that that would be a  
4           reason for concern with respect to the Fidelity Freedom  
5           Funds?

6           A. Well, I knew there had been some deviation in  
7           the style. My sense from what we saw in the context the  
8           several years prior to the referenced period was that  
9           there were adjustments being made to the -- to the       10:41:00  
10           investment strategy that were reflective of overall  
11           changes in the market but not anything that would cause  
12           a particular, let's say, negative red flag.

13           Q. Okay.

14           Next one down is, "There is a significant increase  
15           in expense ratio," slash, "fees of the investment  
16           option, and the expense ratio falls into the bottom       10:41:27  
17           half," open parentheses, "most expensive of the peer  
18           group."

19           Did I read that correctly?

20           A. You did.

21           Q. And that's a criteria that's part of the watch  
22           list process for Quanta and that you looked at but  
23           concluded did not give you any concern with respect to  
24           the Fidelity Freedom funds?

25           A. No, because I didn't view the fee levels as

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1                   dramatically different than the industry norm, and since  
2                   the evaluations were being done net of fees, I have           10:42:00  
3                   indeed lower concern about that.

4                   Q. Okay.

5                   The next one that's described here is "an  
6                   extraordinary event that interferes with the investment  
7                   option's ability to fulfill its role into the future."

8                   Do you see that?

9                   A. Yes.

10                  Q. And again, that's something you looked at in  
11                  connection with evaluating the Fidelity Freedom Funds  
12                  and concluded that was not a reason to put the funds on   10:42:27  
13                  watch or monitor or alert status?

14                  A. That's correct.

15                  Q. And the last one is, "There's instability of  
16                  the organization managing the investment option"?

17                  A. Yes.

18                  Q. And again, you looked at that in connection  
19                  with your report and concluded there was no basis using  
20                  that criteria for any cause or concern with respect to  
21                  the Fidelity Freedom Funds?

22                  A. That's correct.

23                  Q. Okay.

24                  Let's go to the first one on the "Investment Policy  
25                  Statement" which talks about an "investment option's net

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1 performance falls below the median of its peer groups  
2 three-, five-, or ten-year cumulative returns."

3 Do you see that?

4 A. Yes.

5 Q. You testified earlier that you utilized the S&P  
6 index for evaluating the performance of the Freedom  
7 Funds because that's what Quanta was using.

10:43:29

8 Do you remember that?

9 A. I said that's what Quanta testifies in their  
10 Appendix A of the IPS, and that's what Ascend uses in  
11 their quarterly reports provided to the committee.

12 Q. You know that when Ascend prepared reports on  
13 the performance of the Fidelity Freedom Funds, Ascend  
14 provided to Quanta performance against the Lipper peer  
15 group; correct?

16 A. I am aware of that, yes.

10:43:59

17 Q. You didn't use the Lipper peer group when  
18 evaluating the performance against peer groups; correct?

19 A. That is correct.

20 Q. Did you look at the Lipper peer groups when you  
21 were preparing your report?

22 A. I looked at it. We did not have the  
23 specificity available to us of how they constituted  
24 their peer group, but we looked at it, yes.

25 Q. And you've heard of Lipper before?

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1 A. Yes.

2 Q. You've used Lipper peer groups in connection 10:44:30  
3 with other work that you've done with respect to  
4 investment monitoring?

5 A. Yes.

6 (Pause in the proceedings.)

7 MR. BLUMENFELD:

8 Q. In preparing your report, Mr. Marin, did you  
9 consider any other benchmarks for the Fidelity Freedom  
10 Funds aside from the S&P target date index?

11 A. Those were the only ones we used.

12 Q. I know those were the only ones you used. I  
13 was asking if you considered any others.

14 A. We didn't feel it was appropriate given that 10:45:58  
15 they specified the benchmark.

16 Q. And you just said "we," and you've done that a  
17 few times. I just want to make sure.

18 This is your report, and these are your opinions;  
19 correct?

20 A. This is 100 percent my report and 100 percent  
21 my opinion. I have a team of two or three analysts who  
22 did a lot of data gathering as you noted, or as you may 10:46:26  
23 have noticed in my report there was some 150 pages of  
24 numerical exhibits. That's, given my billing hour cost,  
25 the cost effective way to do that is to have our

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1 analysts on our team see that experts do the data  
2 gathering from Morningstar, Lipper, or whatever sources,  
3 Bloomberg or whatever is available, to put them into the  
4 analytical frameworks that I indicate, and then they and 10:47:00  
5 I go over them and evaluate them. That's why I use the  
6 word "we."

7 Q. I don't have a problem obviously with you using  
8 people to help support you in your opinions. I just  
9 want to make sure that when you say "we," you're talking  
10 about your personal opinions as an expert that  
11 Plaintiffs are bringing to the court in connection with  
12 this case, not somebody else's conclusions but yours.

13 A. 100 percent my own opinions. I read the 10:47:29  
14 evidence in the case. I formulate the opinions. I  
15 generate and write all of my own reports. What I use my  
16 support team for are two things, to help me with some of  
17 the specificity of the citations. I do many of the 10:47:58  
18 citations myself, but sometimes I have them do the  
19 legwork to finalize the citations. I have them do  
20 specific research for me if there's research called for.  
21 I do have them do data gathering, and I have them do the  
22 data analysis work to generate the data that is used to  
23 formulate the opinions. I formulate the opinions, and I  
24 write the reports. 10:48:29

25 Q. You wrote a rebuttal report to Dr. Wermers'

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1 report; correct?

2 A. I did.

3 Q. Okay.

4 You saw in Dr. Wermers' report that he compared the  
5 Fidelity Freedom's performance to three different  
6 indices?

7 A. I did.

8 Q. You don't disagree with any of his conclusions  
9 in his report about those three different indices;  
10 correct?

11 A. I disagree.

12 MR. BERIN: Object to form.

13 THE WITNESS: I emphasized the IPS and the stated  
14 benchmark that's called for in the IPS. Generally 10:49:00  
15 that's my -- one of my two big concerns about  
16 Dr. Wermers' report, that he did not comply with what  
17 the IPS says that he should have complied with.

18 MR. BLUMENFELD:

19 Q. And you think it's important to comply with the  
20 IPS?

21 A. I do.

22 Q. Separate and apart from the IPS portion of it,  
23 though, you didn't disagree with his conclusions based  
24 on comparing the performance of the Fidelity Freedom  
25 Funds to the Morningstar US category average or the 10:49:29

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1 Morningstar lifetime moderate index or the S&P target  
2 date index?

3 A. I didn't comment about it because to me that is  
4 a secondary approach. And there's no harm in doing  
5 that, but the information that is most relevant to  
6 deciding whether to retain or terminate a fund choice is  
7 based on what is indicated in the IPS, in my opinion. 10:49:59

8 Q. Got it.

9 And you think -- okay. Let's do this.

10 MR. BLUMENFELD: Mat, can you add Dr. Wermers'  
11 report?

12 MR. MCKENNA: Yes. One moment.

13 THE WITNESS: You want me to reference it?

14 MR. BLUMENFELD:

15 Q. Yes. And it will take a moment to upload it.  
16 Technology is fast but not as fast as we would all like  
17 it.

18 MR. BLUMENFELD: And you'll have to refresh that  
19 folder.

20 MR. MCKENNA: Yeah. I see that.

21 THE WITNESS: I have it. So I'm going to download 10:50:47  
22 it and close this one and pull that one up. Okay. I  
23 have it in front of me. I'm getting pretty good at  
24 this.

25 MR. BLUMENFELD:

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1 Q. All right.

2 A. The technology that is.

3 Q. I'm glad that it's working, and we're not  
4 having any hiccups. That happens sometimes. 10:51:25

5 You have it in front of you?

6 A. I do.

7 Q. Could you turn to -- I'll give you the PDF page  
8 number. It's 179 of 200.

9 A. He's prolific, isn't he? Let's see here.

10 Those page numbers are on the appendix, I believe. You 10:51:55  
11 said page 179?

12 Q. Yes.

13 A. Okay. I'm sorry. I flipped too far forward  
14 into the appendices. Oh, you mean 179 out of 200?

15 Q. Yes. I think that's what I said, but --

16 A. Oh, I'm sorry. I was looking for page numbers.

17 179. Okay. Hold on. I'm getting there. 177, 178, 10:52:30

18 179. Is this the one that says "Fidelity Freedom Funds  
19 versus S&P target date TDFs, Morningstar moderate TDFs  
20 and Morningstar US category average 5-year rolling  
21 return"?

22 Q. September 30, 2016 to March 31, 2021?

23 A. Yes. 10:53:00

24 Q. You have it in front of you? Great. I would  
25 like you to just focus on the December 31, 2016 date

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1 which is the second one in from the left.

2 A. Second column, got it.

3 Q. Yes.

4 And just to orient ourselves, your conclusion is  
5 that as of the December 31, 2016, the Fidelity Freedom  
6 Funds failed the removal criteria and should be removed  
7 as investment options from the plan; correct?

8 A. Yes.

9 Q. And Dr. Wermers concludes that as of that date, 10:53:29  
10 seven of the 12 Freedom funds outperformed the  
11 Morningstar lifetime moderate index, five of 12  
12 outperformed the S&P target date index, and 11 of 12  
13 outperformed the Morningstar US category average;  
14 correct?

15 A. That's what he indicates.

16 Q. And what I want to make clear is, you don't  
17 disagree with his conclusions about those? 10:53:57

18 A. Well, may I reference my report just because I  
19 can sort of triangulate the S&P target date number  
20 against this?

21 Q. Sure.

22 A. We're looking at the last quarter. Let me just  
23 make sure that there's the numbers. And this is the 10:54:23  
24 five year, is it not?

25 Q. I believe that page is five years.

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1           A. Yeah. So what -- This is out of 12. I would  
2           show that 83 percent of the -- of the -- of the           10:54:46  
3           individual funds, 83 percent of them or one, two, three,  
4           four, five, six, seven, eight, nine, ten -- one, two --  
5           I -- instead -- He shows five out of 12. I would show  
6           ten out of 12.   10:55:30

7           Q. On the S&P target date?

8           A. On the S&P target date index.

9           Q. Do you think that's because you're using a  
10          different S&P target date index than he would be using?

11          A. I would have to assume so because I used the  
12          ones provided in the Ascend quarterly reports, and he  
13          may have taken his from another source.

14          Q. And with respect to the Morningstar lifetime  
15          moderate index, you don't offer any opinion about that   10:55:57  
16          at all; correct?

17          A. No, I don't.

18          Q. So you don't disagree with his conclusion with  
19          respect to the Morningstar lifetime moderate index?

20          A. I have no way of agreeing or disagreeing  
21          because I didn't look at the Morningstar lifetime  
22          moderate or the US category average. So in the same way  
23          that five out of 12 does not comport with what I'm  
24          showing on my report, which is ten out of 12 that fail,  
25          I have no way of knowing whether or not 11 of 12 or       10:56:27

1       seven of 12 are the correct indications because I did  
2       not independently gather this data. I do not have a  
3       team of people that looked at that data and verified it,  
4       so I can't speak to whether his report is right or not.  
5       I can only speak to the one issue which I can verify  
6       which I have is which is that it's wrong, which is the  
7       S&P target date.

8           Q. And you didn't look at the Morningstar lifetime 10:56:59  
9       moderate or US category benchmarks, so you don't have a  
10      basis for agreeing with him or disagreeing with him?

11       A. That's correct.

12       Q. So can you go to page 174 out of 200?

13       A. This is the three-year --

14       Q. It is.

15       A. -- period and the same basic analysis. Should 10:57:26  
16      I be looking at the same column?

17       Q. You should.

18       A. And this is one that said six out of 12 for the  
19      S&P target date?

20       Q. Correct.

21       A. And I would say that 100 percent or 12 of 12  
22      fail.

23       Q. And with respect to the Morningstar lifetime  
24      moderate?

25       A. I have the same opinion that I mentioned with

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1       five-year. I didn't look at those, so I have no way of     10:57:59  
2       knowing if they're right or wrong.

3           Q. Dr. Wermers concluded that 12 out of 12  
4       outperformed the Morningstar lifetime moderate index,  
5       and 12 out of 12 outperformed the Morningstar US  
6       category average, and you don't have a basis for  
7       agreeing with that or disagreeing with that?

8           A. No, I don't. The only basis I have is the  
9       fundamental basis that I described with the five-year,  
10      which is that if my results, which are consistent with    10:58:29  
11      what the consultant provided the committee which are  
12      dramatically different what he has from the S&P target  
13      date, from a confidence level that undermines my  
14      confidence in his analysis in general because that's a  
15      fairly big breach of the most important number on this  
16      page, which is the indicated benchmark in the IPS, the  
17      S&P target date.    10:58:59

18           Q. Mr. Marin, if you wanted to, you had his  
19       report, and you could have done the analysis on the  
20       Morningstar lifetime moderate or Morningstar US category  
21       average indices if you believed there was information  
22       that could shed light on that would be helpful; correct?

23           A. I considered it largely irrelevant to the issue  
24       at hand.

25           Q. Got it.

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1                   He mentions several times the "Investment Policy  
2                   Statement" and the materials that Ascend was providing  
3                   to the committee; correct?

4                   A. Correct.

5                   MR. BLUMENFELD: Mat, why don't we add the Q4, 2016  
6                   quarterly investment review.

7                   MR. BERIN: Jeremy, I don't want to interrupt. If  
8                   there is a good stopping point, we've been going about       10:59:58  
9                   two hours. It would be nice to take a short break.

10                  MR. BLUMENFELD: Why don't we do that now.

11                  MR. BERIN: Sorry.

12                  THE VIDEOGRAPHER: We are going off the record.  
13                  The time is 11:00 o'clock.

14                  (A recess is taken.)

15                  THE VIDEOGRAPHER: We are back on the record. The  
16                  time is 11:13.

17                  MR. BLUMENFELD:

18                  Q. Mr. Marin, can you pull up the "Investment  
19                  Policy Statement"? It should be Exhibit 2 to your       11:13:22  
20                  deposition.

21                  A. Got it.

22                  Q. Specifically page 14 of 18 that we've been  
23                  talking about before.

24                  A. Hold on. Watch list process. Got it.

25                  Q. Okay.

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1                 The second sentence there says, "The committee may  
2 consider the following criteria when placing a fund on,"  
3 quote, "monitor," closed quote," or, "quote," alert,"       11:13:57  
4 closed quote, "status"; correct?

5                 A. Yes.

6                 Q. And in paragraph 31 of your report you changed  
7 the "may consider the following criteria" to essentially  
8 "The committee will place a fund on monitor or alert  
9 status if any of the following happen"; correct?

10                MR. BERIN: Object to the form.

11                THE WITNESS: Well, let me see. Can you reference  
12 exactly in "31" where I say that?

13                MR. BLUMENFELD:

14                Q. Sure in "31-B," in "31-C," in "31-D."

15                A. So let's just take "31-B."

16                Q. You say at the end of "31-B, the suite is  
17 flagged and placed on watch for greater scrutiny."

18                A. Yes. That is what I did. I don't think I       11:14:58  
19 specifically said that that's what the IPS says. I just  
20 said that's what we did based on what the IPS indicated.

21                Q. Okay.

22                But in practical terms, you turned the sentence  
23 that says, "The committee may consider the following  
24 criteria when placing a fund on monitor or alert status"  
25 into "The fund will be placed on monitor or alert status   11:15:26

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1 if any of the following happen."

2 MR. BERIN: Object to the form.

3 THE WITNESS: Yeah. I'm not in the business of  
4 rewriting their IPS form. Okay? So I was not  
5 attempting to do anything to change what the IPS said.

6 The IPS says these are the criteria that they may  
7 consider. And of course the idea is that they're  
8 establishing a process for monitoring and review and 11:15:59  
9 removal if necessary, and it is normal and standard  
10 industry practice to do that based on the criteria  
11 indicated in the IPS.

12 So that is the approach that I used. The IPS  
13 provides the guidance. I am supposed to do the  
14 analysis. I did the analysis based on that guidance of  
15 the IPS. To me it's very clear what should be 11:16:28  
16 considered. We considered it. We then flagged it. And  
17 I had the benefit also of looking at the reports that  
18 were provided by their consultant, and I don't believe  
19 anything that I did was inconsistent with what they did  
20 other than my choice of peer groups.

21 Q. We'll get to the peer group choice in just a 11:16:57  
22 minute.

23 But in paragraph 31-B you say, "The suite is  
24 flagged and placed on watch for greater scrutiny."

25 But the IPS doesn't call for that. It says that's

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1 a factor for the plan fiduciaries to consider.

2 MR. BERIN: Object to the form.

3 THE WITNESS: Like I said, paragraph B does not say  
4 that the IPS says that. Paragraph B says that. I then  
5 flagged it and placed it on watch for greater scrutiny 11:17:29  
6 in my analysis.

7 MR. BLUMENFELD:

8 Q. Okay.

9 And paragraph 31-C does the same thing with respect  
10 to the information ratio?

11 A. Yes.

12 MR. BERIN: Object to the form.

13 MR. BLUMENFELD:

14 Q. And in paragraph 31-C you're not relying on the  
15 IPS to articulate the criteria for putting a fund on  
16 watch list?

17 MR. BERIN: Object to the form.

18 THE WITNESS: Well, let's see. This quality is  
19 recognized as a watch list standard in the IPS. The 11:17:58  
20 suite flagged and placed on watch, yes. My same comment  
21 for "B" pertains to "C."

22 MR. BLUMENFELD:

23 Q. The IPS says that it's something that can be  
24 considered, and you said that's something that has to be  
25 flagged for placement on watch?

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1 MR. BERIN: Object to the form.

2 THE WITNESS: I'm saying that the IPS does not put  
3 these things up on its process list for them to be 11:18:26  
4 ignored. They need to be considered. It's industry  
5 standard that they be considered. There's a number of  
6 things that I've cited in my report that address the  
7 fact that that's how they should be considered, and  
8 that's how I considered them.

9 So I'm not quibbling that the IPS says "may  
10 consider," but to me the implications of the IPS, given 11:19:00  
11 its mandate, self-imposed mandate, is to consider those  
12 issues and to take the actions of putting them on a  
13 flagged or monitor basis or alert basis depending on the  
14 outcome of that review.

15 Q. Do you agree that the investment watch list  
16 process that's described in the "Investment Policy  
17 Statement" for Quanta is pretty typical of "Investment  
18 Policy Statement"s for defined contribution plans? 11:19:30

19 A. It's reasonably typical in the sense that I  
20 mean the wording is different because different  
21 consultants word these things a little differently, but  
22 it's fairly typical in that it considers the  
23 quantitative and the qualitative aspects that need to be  
24 monitored and reviewed by the committee to evaluate the  
25 ongoing appropriateness of these funds. 11:19:57

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1           Q. Great. Let's go to Exhibit 4 to your  
2 deposition. It should be in the folder.

3           A. Okay. Let's see here. Exhibit 4. Okay. I  
4 see it there. I'm downloading it. It's downloading.

5           It's Exhibit 4. I got to get out of this one.           11:20:30

6           Exhibit 4. Okay. This is the 4th quarter report by  
7 Ascend as provided to the committee; is that correct?

8           Q. That is what it is, and this is a document you  
9 considered in preparing your report; correct?

10          A. Yes.

11          MR. BLUMENFELD: Okay. Alec, were you able to           11:21:03  
12 download it?

13          MR. BERIN: I'm still working on it.

14          MR. BLUMENFELD: Okay.

15          MR. BERIN: I appreciate you asking.

16          MR. BLUMENFELD: Sure. We'll give you a minute.

17          MR. BERIN: Thank you. I just got it.

18          MR. BLUMENFELD: Okay. Great.

19          Q. Mr. Marin, could you turn to page 50 of 68?           11:21:20  
20 That's of the PDF pages.

21          A. Is this the one that shows "Fidelity Freedom K  
22 2005"?

23          Q. That's the one.

24          A. Okay.

25          Q. And this is information that would have been

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1 provided to the committee about the performance of the  
2 Fidelity Freedom K 2005 Fund as of the time period that 11:21:57  
3 you say the fund should have been removed from the plan;  
4 correct?

5 A. That's correct.

6 Q. Okay.

7 Could you look at "Manager Versus Benchmark  
8 Performance," that sort of table that's in the middle of  
9 the page?

10 A. Yes.

11 Q. Can you see right underneath there it shows  
12 "Product name, Fidelity Freedom K 2005"?

13 A. I'm just going to enlarge it here a little bit.

14 "Product name, Fidelity Freedom K 2005," yes. 11:22:26

15 Q. And also has the "S&P Target Date Retirement  
16 Income."

17 You see that?

18 A. Yes.

19 Q. And that's the benchmark; correct?

20 A. Yes.

21 Q. Okay.

22 If you look at three-year performance, just to  
23 orient you and me, the Fidelity Freedom Fund K 2005 has  
24 three-year performance of 3.41 percent; correct?

25 A. 3.41, correct.

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1 Q. Okay.

2 Immediately to the right of that it shows the rank? 11:22:58

3 A. It shows the Rank 32.

4 Q. Yes.

5 Meaning that the Fidelity Freedom K Fund 2005 was

6 in the top 32nd percentile, essentially the top third of

7 all target date 2005 funds; correct?

8 A. Correct.

9 Q. Okay.

10 It also shows the ranking of the S&P Target Date

11 Retirement Income Fund; correct?

12 A. Yes.

13 Q. And it shows that that fund was ranked in the 11:23:29

14 top 28th?

15 A. Correct.

16 Q. On a three-year basis?

17 A. Yes.

18 Q. Meaning that the S&P Target Date Fund benchmark

19 outperformed 72 percent of target date funds?

20 A. Yes.

21 Q. Okay.

22 Then on a five-year basis it shows the Fidelity

23 Freedom Fund was ranked on the 75th percentile; correct? 11:24:00

24 A. Yes.

25 Q. Meaning that particular fund performed better

Page 93

1 than about 25 percent of other target date funds?

2 A. That's correct.

3 Q. And the S&P Target Date benchmark for that was  
4 in the 85th percentile; correct?

5 A. That's correct, meaning --

6 Q. Meaning that vintage of the benchmark was in  
7 the bottom 15 percent of target date funds? 11:24:26

8 A. That's correct.

9 Q. Okay.

10 Now, let's go to the Fidelity Freedom K 2010, next  
11 page.

12 Do you have that in front of you?

13 A. I do.

14 Q. So as of December 31 of 2016, the committee  
15 would have received this information about the Fidelity  
16 Freedom K 2010 fund?

17 A. That's correct.

18 Q. And this would have shown -- and this shows the 11:24:56  
19 Fidelity Freedom K 2010 Fund was ranked in the top 14  
20 percent target date vintages that were 2010 vintages;  
21 correct?

22 A. It shows the rank as 14, and it shows the rank  
23 as 11 for the target date.

24 Q. For the S&P target date benchmark. Let's break  
25 those down so the record clear.

Page 94

1           The Fidelity Freedom K 2010 Fund was ranked in the 11:25:28  
2 top 14 of target date funds according to Lipper;  
3 correct?

4           A. Yes.

5           Q. Okay.

6           Meaning it was a better performer than about 86  
7 percent of other target date 2010 funds?

8           A. Yes.

9           Q. And the S&P Target Date Index that is the  
10 benchmark that you utilized was ranked in the 11th  
11 percentile; correct? 11:25:59

12           A. Correct.

13           Q. Meaning the S&P Target Date Index outperformed  
14 89 percent of target date funds?

15           A. Correct.

16           Q. Okay.

17           And on a five-year basis, the Fidelity Freedom K  
18 2010 fund was in the top 26th percentile?

19           A. Yes.

20           Q. Meaning it out performed 74 percent of target  
21 date funds?

22           A. Yes.

23           Q. And on a five-year basis, the S&P Target Date  
24 Index was in the 52nd percentile? 11:26:28

25           A. Correct.

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1 Q. Meaning that it outperformed 48 percent of  
2 other target date funds as of that time period?

3 A. Correct.

4 Q. Okay.

5 Let's go to the 2015, next page, which is page 52  
6 of 68.

7 A. Okay.

8 Q. So this shows from Quanta's consultant to the  
9 folks on the Quanta committee that the Fidelity Freedom 11:26:58  
10 K 2015 Fund was ranked in the top 17 percent of target  
11 date funds that were 2015 target date funds; correct?

12 A. Yes.

13 Q. On a three-year basis?

14 A. Yes.

15 Q. Okay.

16 And the S&P Target Date Index for 2015 was ranked  
17 in the top 5 percent?

18 A. Yes.

19 Q. That means that 95 percent of target date funds  
20 would have performed worse than the S&P Target Date 2015 11:27:27  
21 Index; correct?

22 A. Correct.

23 Q. Okay.

24 Let's switch to the five-year.

25 The 2015 fund on a five-year basis was ranked in

Page 96

1 the top 41st percentile; correct?

2 A. Correct.

3 Q. Meaning it outperformed 59 percent of target  
4 date funds?

5 A. Correct.

6 Q. And the benchmark of the 2015 fund outperformed  
7 65 percent of target date funds?

8 A. Correct.

9 Q. Let's go to the next one, 2020.

11:28:00

10 The Quanta consultant provided to Quanta  
11 information that the fiduciaries would have been aware  
12 of as of December 31 or shortly thereafter December 31,  
13 2016 or shortly thereafter this information about the  
14 Fidelity Freedom K 2020 Fund; correct?

15 A. Correct.

16 Q. And this shows the Fidelity Freedom K 2020 fund 11:28:26  
17 on a three-year basis was ranked 7th; correct?

18 A. Correct.

19 Q. Meaning the Fidelity Freedom K 2020 fund  
20 outperformed 93 percent of target date funds in the  
21 marketplace?

22 A. Correct.

23 Q. And the S&P Target Date Index in that  
24 circumstance outperformed 98 percent of the target date  
25 funds in the marketplace?

Page 97

1 A. Correct.

2 Q. Meaning 98 percent of target date funds would  
3 have performed worse than the S&P Target Date 2020 Fund 11:28:59  
4 on a three-year basis?

5 A. Yes.

6 Q. Okay.

7 And on a five-year basis, Fidelity Freedom 2020  
8 Fund was in the 34th percentile?

9 A. Correct.

10 Q. Meaning that it outperformed 66 percent of  
11 target date funds?

12 A. Yes.

13 Q. And on a five-year basis, the S&P Target Date  
14 Index outperformed 84 percent of target date funds?

15 A. Correct.

16 Q. So I was under the impression maybe, or 11:29:30  
17 misimpression, that the S&P Target Date Index would  
18 actually be sort of right in the middle of where target  
19 date funds would be, but that's not actually the case;  
20 correct?

21 A. Well, not in this particular period it's not.

22 Q. Okay.

23 Let's go to the 2025 fund. That's on page 54 of 68  
24 of the PDF. 11:29:58

25 A. Got it.

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1                   Q. The committee would have been told as of this  
2 time period that the Fidelity Freedom K 2025 Fund was  
3 ranked in the 7th percentile; correct?

4                   A. That is correct.

5                   Q. And that's on a three-year basis?

6                   A. Yes.

7                   Q. And that means it outperformed 93 percent of  
8 target date funds?

9                   A. Yes.

10                  Q. And the S&P Target Date 2025 Index outperformed  
11 97 percent of target date funds on a three-year basis?      11:30:26

12                  A. Correct.

13                  Q. And on a five-year basis the Fidelity Freedom  
14 2025 Funds were ranked in the 32nd percentile; right?

15                  A. Yes.

16                  Q. Meaning it outperformed 68 percent of other  
17 target date funds?

18                  A. Correct.

19                  Q. And the S&P Target Date Index that you used as  
20 a benchmark outperformed 73 percent of target date  
21 funds?

22                  A. Correct.

23                  Q. Meaning 73 percent of target date funds would      11:30:57  
24 have performed worse than the S&P Target Date Index on a  
25 five-year basis?

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1 A. Correct.

2 Q. Let's go to the 20 --

3 A. You're trying to test my eyes and my simple  
4 math skills? You're doing a good job.

5 Q. Testing my math skills.

6 A. I got to agree with what you say.

7 Q. So the S&P 2030 Fund -- excuse me, not S&P 2030 11:31:26  
8 Fund -- the Fidelity Freedom K 2030 Fund on a three-year  
9 basis was ranked 8th; correct?

10 A. Correct.

11 Q. Meaning it outperformed 92 percent of target  
12 date funds?

13 A. Correct.

14 Q. And the S&P Target Date 2030 benchmark was in  
15 the top 4 percent?

16 A. Correct.

17 Q. Meaning it outperformed 96 percent of target  
18 date funds?

19 A. Correct.

20 Q. And on a five-year basis, the Fidelity Freedom 11:31:57  
21 K Fund was in the top 32nd percentile?

22 A. Correct.

23 Q. Meaning it outperformed 68 percent of target  
24 date funds?

25 A. Correct.

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1           Q. Let's skip to the 2035 Fund. That is the next  
2 page, 56 of 68 of the PDF.

3           A. Got it.

4           Q. The Fidelity 2035 Fund as of December 31, 2016  
5 was in the top 8th percentile; correct?                           11:32:29

6           A. Yes.

7           Q. Meaning it did better than 92 percent of target  
8 date funds?

9           A. Correct.

10          Q. And the index that you use as the benchmark  
11 ranked third, meaning it outperformed 97 percent of  
12 target date funds?

13          A. Correct.

14          Q. And on a five-year basis, the Fidelity Freedom  
15 K Funds were in the top 34th percentile?

16          A. Correct.

17          Q. And the S&P Target Date Index for the 2035                   11:33:00  
18 five-year basis was in the top 30th percentile?

19          A. Correct.

20          Q. Let's go to the 2040. This is page 57 of 68.

21          A. Got it.

22          Q. The Fidelity Freedom K 2040 Fund was in the top  
23 15th percentile?

24          A. Correct.

25          Q. Meaning that it outperformed 87 percent of

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1 other target date funds?

2 A. Correct.

11:33:30

3 Q. And the benchmark, the S&P Target Date 2040,  
4 was in the top 6th percentile?

5 A. Correct.

6 Q. Meaning, 94 percent of target date funds  
7 performed worse than the S&P Target Date 2040 Fund?

8 A. Correct.

9 Q. And on a five-year basis, the 2040 fund for the  
10 Fidelity Freedom Fund was at the 35th percentile?

11 A. Correct.

12 Q. Meaning that it outperformed 65 percent of  
13 other target date funds? 11:33:59

14 A. Correct.

15 Q. Let's go to the 2045 fund.

16 A. You're not going to bother with the S&P?

17 Q. Oh, we can go do the S&P for that one too.

18 That was in the 20th percentile?

19 A. Correct.

20 Q. Meaning that benchmark outperformed 80 percent  
21 of target date funds?

22 A. Correct.

23 Q. Meaning 80 percent of the target date funds in  
24 the marketplace performed worse than that benchmark?

25 A. Correct.

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1 Q. Let's go to the 2045.

11:34:29

2 The Fidelity Freedom K 2045 Fund was ranked in the  
3 31st percentile; correct?

4 A. No.

5 Q. Well, my bad. I was reading the one-year  
6 ranking.

7 A. I knew there was a reason I was paying  
8 attention.

9 Q. There you go.

10 On a three-year basis, the Fidelity Freedom K 2045  
11 Fund was ranked in the 12th percentile?

12 A. Correct.

13 Q. Meaning that the Fidelity Freedom K 2045 Fund 11:34:57  
14 did better than 88 percent of target date funds?

15 A. Correct.

16 Q. That's information that would have been  
17 communicated to the folks on the committee after  
18 December 31 of 2016?

19 A. Correct.

20 Q. And the S&P Target Date Index that's the  
21 benchmark was in the 3rd percentile?

22 A. Correct.

23 Q. Meaning it performed better than 97 percent of  
24 the 2045 target date funds?

25 A. Correct.

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1 Q. And on a five-year basis, the Fidelity Freedom  
2 K 2045 Funds were ranked in the 41st percentile? 11:35:29

3 A. Correct.

4 Q. And the S&P target date benchmark was in the  
5 17th percentile?

6 A. Correct.

7 Q. And that means the Fidelity Freedom K 2045 Fund  
8 on a five-year basis did better than 59 percent of the  
9 other target date funds in the market?

10 A. Correct.

11 Q. And also that 83 percent of target date funds  
12 would have failed -- that is, fallen below the target  
13 date index on a five-year basis? 11:35:58

14 A. Correct.

15 Q. Let's go to the 2050 fund, which is page 59 of  
16 68.

17 A. Got it.

18 Q. On a three-year basis, the Fidelity Freedom  
19 2050 Fund was in the 20th percentile; correct?

20 A. Correct.

21 Q. Meaning it did better than 80 percent of target  
22 date funds?

23 A. Correct.

24 Q. And the benchmark is the 9th percentile? 11:36:24

25 A. Correct.

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1 Q. Meaning that 91 percent of target date funds  
2 fell below the benchmark?

3 A. Correct.

4 Q. And on a five-year basis, the Fidelity Freedom  
5 K 2050 Fund was in the 23rd percentile?

6 A. Correct.

7 Q. And the benchmark was in the 8th percentile?

8 A. Correct.

9 Q. Meaning over 90 percent of target date funds  
10 performed worse than the benchmark as of December 31 of  
11 2016?

12 A. Correct.

11:36:58

13 Q. Okay.

14 Let's go to the 2055 Fund.

15 The Fidelity Freedom K 2055 Fund was ranked in the  
16 15th percentile; correct?

17 A. Correct.

18 Q. Meaning it did better than 85 percent of target  
19 date funds?

20 A. Correct.

21 Q. And the benchmark, the S&P Target Date Index  
22 was in the 3rd percentile?

23 A. Correct.

24 Q. Meaning 97 percent of target date funds did  
25 worse than that benchmark?

11:37:29

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1 A. Correct.

2 Q. And on a five-year basis, the Fidelity Freedom  
3 K 2055 Fund was ranked in the 41st percentile; correct?

4 A. Correct.

5 Q. And that means it did better than 59 percent of  
6 target date funds?

7 A. Correct.

8 Q. But the S&P Target Date Index actually did  
9 better than 90 percent of target date funds?

10 A. Correct.

11 Q. Meaning nine out of ten target date funds would  
12 not have outperformed the S&P target date?

13 A. Correct.

11:37:59

14 Q. Okay.

15 Let's go to the 2060. There's not enough  
16 information in order to be able to evaluate.

17 A. Let's see here. That's 2055. This shows a  
18 repeat of the 20 -- oh, the 2060. It's done against the  
19 2055 target date that doesn't otherwise exist.

20 Q. And there's no 2065 fund with no three-year  
21 performance as of this point in time either.

11:38:28

22 A. Got it. Yes.

23 Q. How common is it for plans to use the Lipper  
24 ranking when evaluating investment performance?

25 A. I don't know specifically. It's certainly one

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1 of the known peer group rankings. 11:38:47

2 Q. Let's go to paragraph 31-D of your report, sir.

3 A. Okay.

4 Q. Paragraph 31-D you describe evaluating the  
5 Fidelity Freedom Fund against the peer group; correct? 11:39:28

6 A. Correct.

7 Q. But you don't use the peer group that's set  
8 forth in the quarterly materials that were provided to  
9 the Quanta plan fiduciaries; correct?

10 A. That's correct.

11 Q. You create your own peer group?

12 A. No. I chose a peer group that was provided by  
13 the consultant in their annual deep dive review of which  
14 they considered an important part of the annual review  
15 process of the target date funds as they state in their 11:40:00  
16 report.

17 Q. Okay.

18 Did you pick that just because the consultants used  
19 it in their target date deep dives that they provided to  
20 the committee or for any other reason?

21 A. It's normal for peer group assessment to be  
22 done by plan fiduciaries. That is, relevant performance 11:40:25  
23 is always an important measurement criteria. There are  
24 several peer group sort of providers, if you will, data  
25 provider. Morningstar is used. Lipper is used. Those

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1       are the dominant ones. The problem with those peer                   11:40:51  
2       groups is that they are large in terms of they try very  
3       hard to be comprehensive in putting the entire universe  
4       of providers in without any filters. It is normal in  
5       the analytical process in reviewing the performance of a  
6       particular fund to put filters on that represent some of  
7       the qualitative aspects of the process called for in the   11:41:29  
8       IPS. In the case of this IPS, because of the size of  
9       the Quanta fund, the most particularly relevant criteria  
10      is size, and that's a very pragmatic restriction, which  
11      is to say that since TDFs are a reasonably new                   11:41:56  
12      phenomenon sort of in the last 20 years, 25 years, there  
13      are -- there are many new funds that have not yet gained  
14      what we would call sufficient critical AUM mass to be  
15      fair representatives of funds that are investable by a  
16      large plan like Quanta. So in the same way that the IPS   11:42:28  
17      references size of AUM as a key qualitative criteria,  
18      it's my opinion based on my experience that the --  
19      putting a size filter on a peer group is a very relevant  
20      exercise, because otherwise you run into a problem of  
21      trying to compete against funds which are not really           11:42:58  
22      true peers because they are too small to be usable and  
23      investable by the fund. And I believe that is what  
24      underlies the provision of the deep dive list, and I  
25      believe it's why when Ascend provides the deep dive

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1 report every year to the committee, it does so based on 11:43:27  
2 a significantly pared-down peer group, the most relevant  
3 peer group, and I believe it is valuable information to  
4 say that that was the peer group that Ascend thought  
5 that at least annually the committee should review to  
6 see how their chosen fund was performing against the 11:43:55  
7 other peers available in the market.

8 So that is why I chose to use the peer group that  
9 was provided. I could have formulated my own peer  
10 group, but that would have been somewhat arbitrary and  
11 less linked to the experience of the committee. This  
12 was linked directly to the experience of the committee.  
13 It was information provided to the committee by their  
14 consultant, and therefore I thought the most relevant 11:44:32  
15 peer group available at the time for the committee's  
16 use.

17 Q. Sir, do you know how many other plan fiduciary  
18 committees do target date deep dives like the one you  
19 are referencing that Quanta plan fiduciaries did?

20 A. I don't.

21 Q. Do you know if other plan fiduciaries evaluate 11:44:55  
22 the performance of their target date funds against the  
23 Lipper peer group?

24 A. As I said before, I know it's a commonly used  
25 peer group for all purposes. I don't know specifically

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1 which or how many funds used Lipper for their review  
2 purposes or even a modified Lipper. Look, you can  
3 take -- My analysts are capable of taking the Lipper 11:45:27  
4 peer group, putting filters against it. This is what  
5 Lipper does and Morningstar does when you buy their  
6 services and Bloomberg does when you buy its services.  
7 And so any consultant or any analyst who's reviewing  
8 performance data can take the universe and narrow the  
9 universe to be more applicable to the pragmatic  
10 circumstance involved, and therefore when you make a 11:46:00  
11 broad comment or broad question like who else uses  
12 Lipper, they may use Lipper, or they may use a modified  
13 Lipper, or they may use something else. I'm sure it is  
14 used by some, but I don't know how many or which.

15 Q. The "Investment Policy Statement" does not call  
16 for evaluating the performance of the funds against the  
17 specific universe of funds that are identified in the 11:46:28  
18 target date deep dive; correct?

19 A. The IPS is unclear. It says "relative peer  
20 group," and my concern about the broader Lipper peer  
21 group or even a Morningstar peer group, which I might  
22 have constructed, was the concern I indicated which is  
23 those would have to be narrowed considerably to be the 11:46:58  
24 most relevant, and it did happen to be something that  
25 was provided annually to the committee, so it did indeed

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1 represent, in my opinion, the best available peer group  
2 to analyze this fund against.

3 Q. And the peer group that if you had analyzed the  
4 peer group against the Lipper peer group that was 11:47:28  
5 provided to the committee on a quarterly basis, the  
6 Fidelity Freedom Fund would have passed the test that  
7 you articulate in your report in paragraph 31-D because  
8 they performed better than the peer group median;  
9 correct?

10 A. I would have to look at it over all of the  
11 quarters that I focused on for this purpose. But I am  
12 fairly certain just based on the reading of the 4th 11:47:54  
13 quarter 2016 -- which by the way, was indeed the best of  
14 the quarters in terms of the performance of Fidelity  
15 Freedom. As I indicated before, they were only, on a  
16 relative basis, I think 83 percent in breach where most  
17 of the other quarters were -- had a greater percentage  
18 of breach indexes. So I would imagine that the 11:48:23  
19 Lipper -- brought up Lipper universe peer comparison  
20 which is shown in these reports would show a better  
21 outcome than the deep dive, more relevant peer group  
22 index showed. That would not surprise me.

23 Q. Not just better. I mean, we just went through  
24 each of the target date funds and showed that, I think 11:49:00  
25 with one exception, they performed better than the

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1 median on every one, and many of them were in the top 20  
2 percent which means they would have passed the criteria  
3 that you articulate in your report in paragraph 31-D.

4 A. Again, I don't have a full analysis here. I do  
5 recall as we were going through them some that wouldn't 11:49:26  
6 have met the criteria, but many more would have met the  
7 criteria and not failed using the broader, less relevant  
8 peer group.

9 Q. And as you sit here today, you don't know how  
10 prevalent it is for plan fiduciaries to use the Lipper  
11 peer group for evaluating funds as opposed to some other  
12 deep dive peer group that plan fiduciaries might look at 11:49:58  
13 for further analysis?

14 A. No. I think I answered that question already.  
15 I don't know specifically. I'm not surprised that  
16 Lipper is used, but they may be using modified Lipper  
17 that are more narrowed down. I believe the industry  
18 standard is to try to use the most appropriate index  
19 available, and I believe that's what induced Ascend --  
20 who by the way, was indicating underperformance for much 11:50:30  
21 of this period of time for these vintages on its  
22 reports. I presume it motivated them to say to the  
23 committee, at least on an annual basis, hey, you best  
24 look at this more relevant peer index, and you have  
25 better choices available to you here. That's what I

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1 read into those reports.

2 Q. That's a really good point, Mr. Marin. 11:50:57

3 You didn't look at any of the deposition testimony  
4 from the consultant at Ascend or QPA; correct?

5 A. Correct.

6 Q. And you didn't look at any of the deposition  
7 testimony from the actual committee members?

8 A. I have not.

9 Q. So you have no idea why the target date deep  
10 dives were provided to the committee or what was  
11 discussed by the folks on the committee or by the  
12 consultants at Ascend related to the target date deep 11:51:26  
13 dive or the performance of the Fidelity Freedom Fund in  
14 the 4th quarter of 2016?

15 A. Outside of my scope.

16 Q. Got it.

17 Mr. Marin, I have I think a little bit of a simple  
18 math question for you.

19 A. Okay.

20 Q. If you were to take the universe of target date  
21 funds that exist and pick the ten best of those target  
22 date funds -- So far so good?

23 A. Got it.

24 Q. Okay.

25 And then you were to say, I want to see if a target

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1 date fund is falling above or below the median of this  
2 group of the top ten -- 11:52:29

3 A. Right.

4 Q. -- you're going to get about half that fall  
5 below the median; right?

6 A. Correct.

7 Q. And that's true even though these are the top  
8 ten target date funds?

9 A. Correct.

10 Q. And if you were to say out of all of the target  
11 date funds in the universe, I'm going to compare the top  
12 two, you would have one that falls above the median and  
13 one that falls below the median -- correct? -- unless 11:52:56  
14 their performance was exactly the same?

15 A. Yes. But may I add something?

16 Q. If it's an answer to my question, sure.

17 A. Well, I believe that this, as you characterize  
18 it, best performing list, which I'm presuming you're 11:53:25  
19 equating in some way, shape, or form to the deep dive  
20 list, also better fits the qualitative criteria of the  
21 fund, then there is a much higher degree of relevance to  
22 that median performance criteria hurdle that is  
23 described in the IPS and that I used in my report. 11:53:58

24 Q. Mr. Marin, have you done any analysis to see  
25 whether a fund that performs above the benchmark on a

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1           three-year basis or a five-year basis over the last  
2           three years or five years is likely to do better than a  
3           fund that performed above or below the benchmark over  
4           the last three or five years?

5           A. Well, you're talking about an analysis of  
6           reversion of mean effectively, and it's a hotly debated      11:54:30  
7           issue in investment management in general. The answer  
8           is that all you have on a contemporaneous basis to look  
9           at is historical performance as well as the qualitative  
10          issues that are shown and listed and discussed. And  
11          while history is no predictor for future returns, the      11:54:59  
12          best you can do as a performance analyst is to ask  
13          whether or not the fund in question has underperformed,  
14          and the IPS calls for underperformance to be -- to be a  
15          criteria, one, for not selecting it, and two, for         11:55:27  
16          putting it on monitor, alert, and removing it.

17           So as far as I'm concerned, trying to get into,  
18           let's call it, advanced and theoretical approaches to  
19           predictive methodologies is not something that is called  
20          for in the IPS. It's not something that is used on a  
21          day-to-day basis in most of these performance         11:55:57  
22          evaluations, and therefore, it's not something that I  
23          used in this particular analysis.

24           Q. My question was whether you did any studies on  
25          it.

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1           A. I have read plenty of studies on it over my 47  
2       years in the industry, so I've been aware of it. But  
3       I'm not a research analyst, so no, I didn't perform a  
4       study.

5           Q. And in connection with your report in this case  
6       or in any other capacity, you haven't done any analysis  
7       to see whether the tests that you articulate in                  11:56:29  
8       paragraph 31-B is likely to yield a better target date  
9       fund over the next three or five or ten years or a worse  
10      target date fund over the next three or five or ten  
11      years; correct?

12           A. I'm not sure anybody has that kind of crystal  
13       ball or any particularly better ability to do that than  
14       through, you know, analytics. You can so some  
15       problemistic assumptions, but there's no guarantees, and   11:56:58  
16       there's no certainty of being able to be highly  
17       predictive, no.

18           Q. And you haven't done any sort of analysis like  
19       that?

20           A. For this exercise? No.

21           Q. Ever.

22           A. Like I said, I've had up to 60 research  
23       analysts doing work for me, and in my academic  
24       experience as a professor of the practicum in investment   11:57:29  
25       management at a major business school for over a decade,

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1 I've certainly seen the studies. I've discussed those  
2 studies with plenty of academics and practitioners, and  
3 so I'm very aware of them. I know that on a practical  
4 basis in reviewing and doing the kind of assessment  
5 that's called for in this case in this time frame based 11:57:59  
6 on this IPS that it's not called for.

7 Q. My question, sir, is whether you've ever done a  
8 study. 11:58:16

9 THE REPORTER: I'm sorry. I'm having a computer  
10 problem.

11 (Pause in the proceedings.)

12 THE REPORTER: "My question, sir, is whether you've  
13 ever done a study --"

14 MR. BLUMENFELD: That was the question.

15 THE REPORTER: And the answer?

16 THE WITNESS: You want me to give my answer again,  
17 Jeremy?

18 MR. BLUMENFELD:

19 Q. You said you're not a research scientist, so  
20 no?

21 A. I would have said, and if you'd let me finish,  
22 was to say that I'm not a research scientist, so no, I 11:58:58  
23 personally have not done it.

24 But as I said, I've had a number of people working  
25 for me who have conducted those studies, and I have

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1 participated in, you know, review and conversation of  
2 those as I have in the academic environment as well, so  
3 I rely on a research analyst who does them. Though I  
4 haven't done them, but I have participated in doing 11:59:29  
5 them.

6 Q. And my question, sir, was specifically about  
7 target date funds.

8 So you're saying you've participated in studies  
9 that have been done about the analysis that's contained  
10 in paragraph 31-B of your report and whether it yields  
11 better target date funds as opposed to worse target date  
12 funds over the next three or five or ten years?

13 A. Yes.

14 Q. Okay.

15 What studies?

16 A. I can't name the specific studies. I'm saying 11:59:58  
17 that I recall our people doing them at Bankers Trust and  
18 Deutsche Asset Management in particular but also  
19 reviewing them when I was at Bear Stearns Asset  
20 Management. And I didn't do the studies, as I said, but  
21 I was involved in discussing and reviewing those  
22 studies, and the same can be said of my work as a  
23 clinical professor of investments at Cornell.

24 Q. But you can't identify any of the studies that 12:00:29  
25 you're describing?

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1 A. Not off the top of my head, no.

2 Q. Okay.

3 And how many target date funds existed before 2003?

4 A. I -- I don't know specifically. I don't have  
5 that information. I'd have to look at the historical  
6 records.

7 Q. And am I right that you don't recall the names  
8 of the studies that you're describing or the outcomes of 12:00:58  
9 the studies that you're describing or any specifics of  
10 the analyses that you're describing?

11 MR. BERIN: I'll object to the form.

12 THE WITNESS: Yeah. I think, as I said, I'm not a  
13 research analyst, so no, those are not on the tip of my  
14 tongue.

15 MR. BLUMENFELD:

16 Q. Okay.

17 So paragraph 31-C, have you conducted any studies  
18 to evaluate whether information ratio analyses like what  
19 you describe in paragraph 31-C yield better target date 12:01:25  
20 funds or worse target date funds over the following  
21 three or five or ten-year period?

22 A. No.

23 Q. And are you aware of any other studies that  
24 anybody else has done?

25 A. I have seen that. I've seen studies over the

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1 years that incorporate a review of the content value of  
2 information ratio analysis. I just can't name the  
3 studies.

12:02:00

4 Q. Were any of those studies about target date  
5 funds?

6 A. Yes.

7 Q. But you can't name the studies?

8 A. I cannot.

9 Q. Okay.

10 Do you remember the decade that the study was  
11 published in or conducted?

12 A. In the last 20 years.

13 Q. Okay.

14 Would it have been in the last ten years? 12:02:26

15 A. Probably.

16 Q. And do you recall the outcome of the study that  
17 you're describing whose name you don't know?

18 A. I don't remember enough about the studies.

19 What I do remember is there is -- that no one technique  
20 is totally predictive, and that indeed the methods used 12:02:55  
21 in this particular IPS called for. The criteria called  
22 for in this IPS were standard industry practice, and  
23 nothing that was being provided by the academy was being  
24 used to supplant that at that moment in time, again  
25 remembering that this -- the reference period is almost

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1           a decade ago. So when you ask about what I've seen in  
2           the last decade, I'm not sure how relevant that is to       12:03:29  
3           the time period we're considering here.

4           Q. When you say the "academy," what academy are  
5           you referring to?

6           A. I mean the academic community in the investment  
7           management space.

8           Q. Let's go back to the "Investment Policy           12:04:06  
9           Statement."

10          A. Okay. Got it.

11          Q. Just so the record is clear, this is Exhibit 2  
12          to your deposition; correct?                                   12:04:29

13          A. Correct.

14          Q. The investment watch list process document?

15          A. So page 14 of 18?

16          Q. Page 14 of 18.

17          You start your analysis of the Fidelity Freedom  
18          Funds in the 4th quarter of 2015; correct?

19          A. I do.

20          Q. And so in that quarter you say the funds should  
21          be put on monitor status in accordance with the terms of  
22          the "Investment Policy Statement"; correct?

23          A. Correct.   12:04:59

24          Q. And then the second quarter will be Q1 of 2016;  
25          correct?

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1 A. Yes.

2 Q. And you say they should stay on monitor status  
3 then; correct?

4 A. Correct.

5 Q. That's their second quarter on monitor status;  
6 correct?

7 A. Right.

8 Q. Then we get to Q2 of 2016, and you say they  
9 should be on monitor status then too?

10 A. Correct.

11 Q. That's their third time period that they're on 12:05:27  
12 monitor status?

13 A. Correct.

14 Q. And then we get to Q3 of 2016?

15 A. Correct.

16 Q. And you say they should be still on monitor  
17 status; correct?

18 A. Correct.

19 Q. And that's their fourth quarter that they're on  
20 monitor status; correct?

21 A. Correct.

22 Q. Q4 of 2016 performance you say again warrants 12:05:55  
23 them staying on monitor status; correct?

24 A. Well, after four quarters doesn't it switch to  
25 alert?

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1           Q. Good point. Thank you for correcting me on  
2           that.

3           So after four quarters they should move to alert  
4           status; correct?

5           A. I believe so, yes.

6           Q. Okay.

7           So then as of January 1 of 2017, they're on alert  
8           status as of the performance for the immediately       12:06:27  
9           preceding quarter; correct?

10          A. Say that one more time?

11          Q. As of January 1 of 2017, they are on alert  
12          status based on their performance as of the immediately  
13          preceding quarter?

14          A. Yes.

15          Q. 2016?

16          A. Yes.

17          Q. And that's based on your application in  
18          paragraph 31 of your report of how you interpret the  
19          criteria set forth on the watch list process; correct?

20          A. Correct.    12:06:59

21          Q. Okay.

22          Now, this says in the "Investment Policy Statement"  
23          that an investment can remain on alert status for at  
24          least two quarters, and then the committee will consider  
25          alternative investments; correct?

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1 A. It said it can, yes.

2 Q. Okay.

3 And under the terms of the "Investment Policy  
4 Statement" then, the investment wouldn't be removed as  
5 of Q1 of 2017?

6 A. Well, the "Investment Policy Statement" says 12:07:27  
7 that after it's been on monitor for four quarters, and  
8 after it's been put on alert, the way I interpret it is  
9 that that effectively says that if it remains unimproved  
10 at that point and continues to breach the criteria  
11 standards that it can and should be removed.

12 Q. So the "Investment Policy Statement" says that 12:08:00  
13 "After two consecutive quarters on alert status, the  
14 committee shall consider alternative investment options  
15 and discuss the merits of replacing or continuing the  
16 investment"; correct?

17 A. Well, it says no later.

18 Q. Right.

19 A. I interpret that paragraph differently than  
20 apparently you do. I interpret that paragraph to mean  
21 that worst case they could leave something on alert for 12:08:30  
22 two quarters, but that if it's been on monitor for four  
23 quarters, and the fifth quarter it goes on alert that  
24 that is -- that is sufficient to indicate removal.

25 Q. Okay.

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1 Did you ask -- did you -- not ask. 12:08:54

2 We already talked about the fact you didn't review  
3 the deposition testimony from anybody at Quanta or from  
4 the consultant about how they interpreted and applied  
5 the monitoring list criteria; correct?

6 A. No, I didn't. I just used what was written in  
7 the IPS.

8 Q. Okay.

9 And if your interpretation of that IPS provision is  
10 incorrect, then the funds wouldn't be subject to removal  
11 as of Q1 of 2017; correct? 12:09:29

12 MR. BERIN: Objection as vague.

13 THE WITNESS: My interpretation would suggest that  
14 they are subject to removal, and my experience in the  
15 industry would imply that that is grounds for removal,  
16 and my citations of -- in my report of other literature  
17 which indicates that that's a framework for removal are  
18 all very consistent. 12:10:00

19 MR. BLUMENFELD:

20 Q. Right, but you're not answering my question.

21 A. What is your question again then?

22 Q. If your interpretation of the "Investment  
23 Policy Statement" is not correct, then the funds would  
24 not be subject to removal under the terms of the  
25 "Investment Policy Statement" as of Q1 of 2017?

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1 MR. BERIN: Object to the form.

2 THE WITNESS: Well, so you're posing a hypothetical  
3 to me; is that correct?

4 MR. BLUMENFELD:

5 Q. I was asking a very simple question, sir. 12:10:29

6 A. But isn't your question a hypothetical?

7 Q. I'm asking if your interpretation of the  
8 "Investment Policy Statement" is incorrect.

9 A. Okay. That's a hypothetical.

10 Q. Okay.

11 Then yes, it's a hypothetical question.

12 A. Okay. So since I believe my interpretation is  
13 correct, I believe there has to be removal.

14 Q. Right.

15 And if your interpretation is not correct, then it 12:10:58  
16 wouldn't be subject to removal as of Q1 of 2016;  
17 correct?

18 MR. BERIN: Object to the form.

19 THE WITNESS: If my interpretation is incorrect,  
20 then I would want to figure out what the criteria is  
21 supposed to be for removal, because to me showing five  
22 quarters using three and five-year averaging of 12:11:28  
23 breach-of-performance standards or underperformance as  
24 is characterized by Ascend is, by all standards I've  
25 ever seen for 47 years in the industry, a clear

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1 indicator for removal.

2 So if you're telling me that somehow I'm wrong  
3 hypothetically, then I would first start by saying,  
4 well, then what is the criteria for removal? And if 12:11:56  
5 that isn't, what is? And I would start by asking that  
6 question.

7 MR. BLUMENFELD:

8 Q. Okay.

9 Can you answer my question?

10 A. Well, rephrase it one more time.

11 Q. Mr. Marin, you just have to listen to it.

12 A. Well, I'm trying to listen to it, but you're  
13 posing a hypothetical that doesn't make sense to me.

14 Q. You said, Mr. Marin, that you're interpreting  
15 the "Investment Policy Statement" to call for a fund 12:12:29  
16 that has been on alert status for one quarter to be  
17 subject to removal.

18 A. And I believe that the committee has the  
19 discretion under the IPS to do that, yes.

20 Q. Okay.

21 And that's fine. That's your hypothetical  
22 interpretation of the "Investment Policy Statement." I  
23 was asking you about the contrary hypothetical --  
24 meaning, your interpretation is not correct, and the 12:12:58  
25 investment option is supposed to be on alert status for

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1 two quarters after being on monitor status for four  
2 quarters.

3 And if that's true, then under the terms of the  
4 "Investment Policy Statement," this investment would not  
5 be subject to removal as of Q1 of 2017; correct?

6 A. If all what you state hypothetically is true,  
7 then I'm presuming that one would look at this for one  
8 more quarter, which is the first quarter of 2017, and 12:13:29  
9 judge it accordingly at that point for removal.

10 Q. Okay. Good.

11 Now, you mentioned that you cited some other  
12 studies or analysis about this idea of four consecutive  
13 review periods.

14 A. Correct.

15 Q. So where do you do that?

16 A. Well, I thought I had that in the -- in one of  
17 my footnotes where I reference some of the studies. 12:13:59  
18 Take a look --

19 Q. Take your time. 12:14:23

20 A. If you look at Footnote 16 on page 11 -- 12:14:46

21 Q. Footnote 16?

22 A. Yes. Oh no, no, no, no, no. Footnote 11 on  
23 page 9. 12:15:25

24 Q. Is that it?

25 A. Yes.

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1 Q. Okay.

2 And what you cite in Footnote 11 says that a watch  
3 list can be based on underperformance against an index  
4 for three consecutive quarters, among other things. 12:15:58

5 Actually, what you cite in Footnote 11, let me read the  
6 entire thing, quote, "Trustees should define changes to  
7 a fund by designating the fund to a watch list or to  
8 terminate that fund as an option under the plan. The  
9 watch list may be based on performance," comma,  
10 "three-year peer ranking below the median for three  
11 consecutive quarters," comma, "three-year index under  
12 performance for three consecutive quarters, violating 12:16:29  
13 risk guidelines, style drift for three quarters, or loss  
14 of key investment people."

15 That's the first cite; correct?

16 A. Correct.

17 Q. And that doesn't say anything about a fund  
18 getting removed after four or five quarters of being on  
19 a watch list?

20 A. It says designating the funds to a watch list  
21 or to terminate the funds.

22 Q. It says that, but then the next sentence says,  
23 "The watch list can be based on --" and then it 12:16:59  
24 articulates all of these criteria.

25 A. Well, I believe that captures the essence of my

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1 choice to terminate after five quarters of  
2 underperformance, and I think the next reference does  
3 the same.

4 "If at any time any of the following criteria are  
5 triggered, the investment manager shall be notified of  
6 the board's concerns and shall be terminated at the 12:17:26  
7 discretion of the board in consultation with the  
8 investment performance consultant. Four consecutive  
9 quarters of performance below the 'X' percentile in  
10 performance rankings for the investment manager's  
11 specified numbers."

12 Q. Well, the first one doesn't actually address  
13 removal after four quarters or five quarters or six  
14 quarters at all; correct?

15 A. The first one says that "The trustee should  
16 define responses to changes in a fund by designating the 12:17:57  
17 fund to a watch list or to terminate that fund."

18 Q. Right. Keep reading.

19 A. "As an option under the plan --"

20 Q. Keep reading.

21 A. "-- the watch list --" okay. Now it's talking  
22 specifically about the watch list -- "may be based upon  
23 performance in the three-year rankings, median of three  
24 years." It's just going through the specificity of the  
25 criteria.

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1 Q. For the watch list?

2 A. Right. And they're talking about even a 12:18:28  
3 shorter time frame there, three quarters.

4 Q. No, Mr. Marin. What this says is after three  
5 consecutive quarters, the fund can be placed on a watch  
6 list.

7 A. Or to terminate that fund.

8 Q. You're taking part of the sentence that is in  
9 one place in the document --

10 A. Then tell me what -- what the "or terminate the  
11 fund" refers to in this instance? 12:18:58

12 Q. That's fine. I don't need to argue with you.  
13 The document that you cite speaks for itself on that  
14 one.

15 Let's look at the next one.

16 What's the title of the second document?

17 A. "State and Local Government Retirement Law, a  
18 Guide for Lawyers, Trustees, and Plan Administrators."

19 Q. Okay.

20 And the blank about the percentile is a blank;  
21 correct?

22 A. Yes.

23 Q. What criteria -- what criteria did you apply in 12:19:27  
24 that category?

25 A. 50th percentile based on the peer group that I

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1 thought was most relevant.

2 Q. Can you, sir, identify any plans in the last  
3 ten years that remove a fund after being on a watch list  
4 for four quarters?

5 A. You continue to ask me to reference specific 12:19:59  
6 funds, and my answer is no, not specifically, but I  
7 believe that is an industry standard.

8 Q. Okay.

9 What about five quarters?

10 A. Well, I say that it's -- it's a little  
11 different for target date funds, and four or five  
12 quarters is an appropriate period of time for  
13 underperformance leading to termination when it comes to 12:20:28  
14 target date funds, and it's even shorter for individual  
15 funds, in my opinion, using three and five-year average.

16 Q. Can you identify any other plans that remove a  
17 target date fund based on being on a watch list for five  
18 quarters?

19 A. I haven't done a study of the plans that have  
20 removed funds for performance, so the answer is no, I 12:20:58  
21 can't do that.

22 Q. Okay.

23 Do you know what percentage of target date funds  
24 would fail the criteria that you articulate in  
25 paragraph 31-A, B, C, and D of your report?

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1 A. Well, I'm not sure --

2 MR. BERIN: Object to the form.

3 THE WITNESS: Yeah. I'm not sure I consider it 12:21:29

4 relevant how many target date funds. That was outside  
5 my scope to do that. What I would tell you is that I  
6 believe under a smaller, more appropriately defined peer  
7 universe there would most likely be several that  
8 underperformed and didn't meet the criteria.

9 But like you said yourself, that's the nature of  
10 using the median as the bar that needs to be -- that 12:21:59  
11 needs to be covered. Half of them will fail.

12 MR. BLUMENFELD:

13 Q. And as against the benchmark that you  
14 articulate in paragraph 31-B, we saw from the 4th  
15 quarter 2016 report 97 percent of some of the target  
16 date funds would fail?

17 A. It's 97 percent --

18 MR. BERIN: I'll object to the form.

19 THE WITNESS: It's 97 percent of what I would 12:22:29  
20 consider the entire peer universe.

21 MR. BLUMENFELD:

22 Q. Okay.

23 A. An inappropriate peer universe. And by the  
24 way, one other observation. You can't pick out one 12:22:58  
25 vintage, because as we know, these target date funds are

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1           sold as a suite, so you have to do what I did in my  
2           analysis which is to say how many of those vintages have  
3           breached that standard, and you have to look at sort of  
4           the percentage of the vintages, not one that happened to  
5           hit 97 percent against a peer universe that isn't           12:23:27  
6           appropriate. So I'm not sure your numerical comment is  
7           particularly useful.

8           Q. Mr. Marin, you raise a good point.

9           The "Investment Policy Statement" doesn't indicate  
10          this notion of half of the vintages performing below the  
11          median or half of the vintages performing below the  
12          benchmark at all; right?

13          That's something that you made up in connection  
14          with this case?

15          MR. BERIN: Object to the form.                           12:23:58

16          THE WITNESS: That's something that has to be done  
17          to analyze this type of investment.

18          MR. BLUMENFELD:

19          Q. Do you know if other plans utilized that type  
20          of methodology when it comes to evaluating your target  
21          date funds?

22          A. Well, I can tell you that Ascend, because it  
23          lists every individual vintage, it's implied that they  
24          look at that information across all vintages.           12:24:24

25          Q. Okay.

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1 So you've got this plan that does it.

2 Can you identify any other plans that apply the  
3 methodology you're describing?

4 A. No.

5 Q. Okay.

6 Can you go to page 24 of your report where it  
7 starts?

8 A. On Section 47?

9 Q. What's that?

10 A. Section 47 on page 24?

11 Q. Sorry, Mr. Marin. I'm trying to go to your 12:25:27  
12 report.

13 A. I'm looking at my report in hard copy.

14 Q. I got you. I was looking at the PDF pages.

15 A. Sorry.

16 Q. Paragraph 42?

17 A. Okay. All right. Yes.

18 Q. This is where you describe the selection of an  
19 alternative investment to the Fidelity Freedom Funds;  
20 correct?

21 A. Section 42? 12:25:58

22 Q. Paragraph 42.

23 A. Yeah. I'm looking at paragraph 42.

24 Q. Okay.

25 A. I'm just looking at it for a moment. Give me a

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1 moment.

2 Q. Yeah. Take your time.

3 A. Yes. Go ahead.

4 Q. This is the beginning of the section where you  
5 describe selecting an alternative investment to the  
6 Fidelity Freedom Funds; correct? 12:26:28

7 A. Correct.

8 Q. And you engage in a numerical scoring  
9 methodology?

10 A. I do, yes.

11 Q. Where you rank some target date funds on  
12 different criteria?

13 A. Correct.

14 Q. And for this analysis, you used some of the  
15 funds from the target date deep dive but some other  
16 funds that you selected; correct?

17 A. I treated the analysis as a two-pronged  
18 analysis. The first prong was to determine whether or 12:26:58  
19 not the Freedom Funds should be terminated, and that was  
20 the first prong of the analysis. Once I had determined  
21 that they should be terminated in the time frame I  
22 indicated, I looked on a contemporary basis at the  
23 entire universe of TDF funds using the Morningstar 12:27:23  
24 database, then narrowed down for the criteria called for  
25 in the IPS, and that led to an array of funds, a dozen

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1 funds which met that criteria. And there was meaningful  
2 overlap with the deep dive list, but I did not use the  
3 deep dive list because the deep dive list was a peer 12:27:59  
4 group used for assessment in the first prong. The  
5 bottoms-up approach of looking at the full universe with  
6 filters on it was what we used for the choice of an  
7 alternative, so that's why the difference.

8 Q. Got it. Okay.

9 In paragraph 44 at the end of that paragraph -- 12:28:29

10 A. Uh-huh.

11 Q. -- you say that you "further refined the set by  
12 choosing the lowest-cost share class and the oldest  
13 share class by inception date among those available for  
14 the relevant vintages."

15 Do you see that?

16 A. Yes.

17 Q. I don't understand that.

18 Can you explain?

19 A. Well, you can understand using the lowest cost  
20 class; correct? That's not challenging to understand. 12:28:59  
21 We wanted to make the assumption that we would -- that  
22 the committee would choose the least expensive share  
23 class because of the scale of the plan. Okay?

24 Q. All right.

25 A. And then we wanted to make sure that the --

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1 because you have so many different vintages involved in 12:29:25  
2 a TDF, we wanted to make sure that the particular share  
3 class we were choosing was in existence long enough and  
4 therefore met the criteria, the qualitative criteria of  
5 the IPS of having been in existence for three years.  
6 So, you know, those were two sort of, let's just say,  
7 final refinements to what we included in the selection 12:29:57  
8 criteria.

9 Q. So -- so what happens if one fund is the lowest  
10 cost share class, and a different one is older?

11 A. We will use the lowest cost share class first  
12 so long as it has been in existence long enough to  
13 capture the vintages we need to capture the bulk of the  
14 assets in the TDF. 12:30:28

15 Q. What does that mean, the "bulk of the assets in  
16 the TDF"?

17 A. Well, every vintage has a different amount of  
18 assets associated with it, and when you get to some of  
19 the older or in certain cases depending on the funds  
20 being used, the further out into the future vintages,  
21 like the 60 or 2065, whatever, different TDFs add new 12:30:52  
22 sleeves or new vintages at different times, and  
23 different TDFs treat expiring target date funds --  
24 meaning, you've past the target date -- differently.

25 Some of them terminate, and the funds automatically roll

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1       into a retirement sleeve or a sleeve that is intended to  
2       capture the post retirement, I guess I'll call it,           12:31:27  
3       experience, and so you have to, you know, carefully look  
4       at those issues to make sure that we're looking at  
5       apples and apples, and we're looking at comparability  
6       between TDFs. So the aging is a secondary concern that  
7       we try to filter for. But the share class cost --           12:31:54  
8       meaning, the lowest share cost -- was the primary driver  
9       of that final filter.

10           Q. And why was it important to use the lowest cost  
11       share class?

12           A. Because fees reduce the net return to  
13       participants.

14           Q. And am I right that a higher fee fund will not   12:32:28  
15       only have higher fees but as a result will have lower  
16       performance and will have worse other metrics,  
17       information ratio, Sharpe ratio?

18           MR. BERIN: Object to the form.

19           THE WITNESS: It will have lower net performance,  
20       correct.

21           MR. BLUMENFELD:

22           Q. In paragraph 47 of your report --                  12:33:00

23           A. Yes.

24           Q. -- you describe methodology that yields your  
25       conclusion that the American Funds Target Date

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1 Retirement Fund Series R6 share class should replace the  
2 Freedom Funds as of the first quarter of 2017; correct?

3 A. Correct.

4 Q. Okay.

5 And you described this ranked scoring analysis that  
6 you utilized?

7 A. Yes. 12:33:30

8 Q. Can you identify any plans in the last 20 years  
9 that have used that ranked scoring methodology that you  
10 described?

11 A. No.

12 Q. The factors that you considered in your 12:34:00  
13 analysis are the expense ratio, yes?

14 A. Yes.

15 Q. Standard deviation on a three-year and  
16 five-year basis?

17 A. Yes.

18 Q. Maximum drawdown on a three-year and five-year  
19 basis?

20 A. Yes.

21 Q. Analyze the total return on a three-year,  
22 five-year basis?

23 A. Yes.

24 Q. Sharpe ratio on a three-year, five-year basis?

25 A. Yes.

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1 Q. Alpha on a three-year and five-year basis?

2 A. Yes.

3 Q. Information ratio on a three-year and five-year 12:34:30  
4 basis?

5 A. Yes.

6 Q. And the time period that you evaluated was  
7 essentially ending as of Q4 2016; correct?

8 A. Correct.

9 Q. Okay.

10 Did you do any analysis of these -- and the funds  
11 that you list are the funds that are contained on  
12 Table 6 of your report; correct?

13 A. Yes.

14 Q. Okay.

15 Did you do any analysis of the holdings of any of 12:34:57  
16 these target date funds?

17 A. No. We didn't dive down into the sort of  
18 individual holdings.

19 Q. Okay.

20 Did you look at the glide paths of any of these  
21 target date funds?

22 A. We had information from Morningstar that  
23 implied what the glide paths were from a to or through  
24 standpoint, yes.

25 Q. To or through, but did you look at the glide 12:35:28

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1 path as it changed over time for the different funds?

2 A. The answer is yes, in general. It wasn't a  
3 major criteria, because as you can tell by looking at  
4 the deep dive report, these glide paths are all -- you  
5 know, there's no major outliers to them among certainly  
6 the deep dive peer group listing, and the same would be  
7 true of these. They are more or less similar. They're 12:35:58  
8 not exactly the same, but they're more or less similar.

9 Q. You didn't actually include any analysis in  
10 your report of the glide path of any of the target date  
11 funds that are listed here?

12 A. I didn't include it, but I considered it.

13 Q. Okay.

14 You didn't identify it as materials that you  
15 considered in your report either?

16 A. It's not -- it's something that falls into the  
17 qualitative considerations of the fund, but it's not a 12:36:29  
18 hard output that you can measure easily against  
19 different alternative funds. So the answer is so long  
20 as it fell within the range of reasonableness for funds  
21 of this type, then we considered that sufficient for  
22 this exercise of picking the best alternative. 12:36:55

23 Q. Okay.

24 You didn't evaluate the holdings in stocks and  
25 bonds of the different target date funds in your

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1 analysis that you contain in Table 6 of your report?

2 A. No. That was beyond the scope of what I was  
3 asked to do.

4 Q. And you didn't consider holdings in domestic  
5 equities versus international equities; correct?

6 A. Correct, correct.

7 Q. And you didn't consider the allocation to large  
8 cap stocks or small cap stocks or value stocks or world 12:37:26  
9 stocks in your analysis of selecting an appropriate  
10 target date fund for the Quanta plan?

11 A. Well, not at a granular level. But keep in  
12 mind that the fundamental risk reward characteristics of  
13 those different elements that you're quoting will indeed  
14 become reflected in all these metrics that we looked at  
15 in aggregate. So this type of exercise of selecting  
16 among target date funds given the number of vintages 12:37:58  
17 involved and given the robustness of the amount of data  
18 involved is best done through capturing the aggregate  
19 characteristics of risk and reward as evidenced by these  
20 criteria that we used in our score card.

21 So I believe all of the most critical elements are 12:38:26  
22 captured because I'm not sure that any analyst could  
23 look at 12 different funds, as an example, for, you  
24 know, 12 different vintages of those funds and the  
25 holdings in each of those and come up with a

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1 multi-variant conclusion that was any better than using  
2 aggregate data. That's why aggregate data is used.

3 Q. And that's why you used aggregate data? 12:39:03

4 A. No. That's why the industry uses aggregate  
5 data, and I use aggregate data.

6 Q. Okay.

7 Did you look at the underlying funds in which the  
8 various target date funds are invested in?

9 A. No, for the same reason.

10 Q. Okay.

11 So you didn't look to see -- you didn't look to see  
12 if any of these target date funds had underlying funds 12:39:28  
13 that had underperformed their benchmark on a three-year  
14 or five-year basis?

15 A. Not specifically because that would, if they  
16 were significant holdings, reflect itself in the numbers  
17 that we did look at.

18 Q. Okay.

19 A. Like I said, the aggregate data when you're  
20 looking at 12 different vintages across 12 different  
21 funds is best done on an aggregated basis using the 12:39:56  
22 criteria that we used.

23 Q. And you didn't evaluate how many of the  
24 underlying sub-funds in which any of the target date  
25 funds are invested did not even have a five-year track

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1 record?

2 A. We did not look at track record at that level.

3 We looked at track record for the funds overall.

4 Q. Okay.

5 Did you evaluate the funds that you include as  
6 potential alternative funds against the removal criteria 12:40:29  
7 that you described in paragraph 31-A, B, C, D, and E?

8 A. No.

9 Q. Just to stick with the American Funds as an  
10 example, did you evaluate to see whether the American  
11 Funds would have failed the removal criteria you 12:40:58  
12 articulate in paragraph 31-A, B, C, D, and E in 2012 or  
13 2013 or 2014 or 2015 or 2016?

14 A. No.

15 Q. And you didn't do that for any of the other  
16 funds either?

17 A. No. Like I said, it was a two-pronged  
18 analysis. We dealt with them separately, and there was  
19 no reason for our analysis to do that.

20 Q. Got it. 12:41:29

21 Did you evaluate any of these target date funds  
22 with respect to their performance in the second quarter  
23 of 2017 or the third quarter of 2017 or the fourth  
24 quarter of 2017?

25 A. No. This was a contemporaneous exercise, and

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1       we evaluated this right up to the point where we thought  
2       we had to make decisions as though we were the committee  
3       at that contemporaneous moment.

4           Q. And did you evaluate any of the criteria that       12:41:59  
5       you contain in Table 6 with regard to the target date  
6       funds in 2018, 2019, 2020, or 2021?

7           A. No.

8           Q. Or '22, '23, '24?

9           A. No. That would be -- that would be biasing the  
10      analysis, wouldn't it? How do you make it -- how do you  
11      put yourself in the position of a contemporaneous  
12      analyst as though the committee had to deal with it in  
13      the first quarter of 2017 if you're looking at       12:42:29  
14      nonexistent data in the future?

15           Q. Why is it important to focus on the  
16      contemporaneous information that would be available as  
17      opposed to looking at the information that would be  
18      available, say, in 2021 or 2022 or 2023 or 2024?

19           A. It has to do with the purity of the exercise, I  
20      believe, and the exercise is to look at this without  
21      hindsight bias. And obviously I disagree tremendously   12:42:58  
22      with using hindsight bias when you're selecting  
23      alternative funds. That would invalidate the exercise,  
24      as far as I'm concerned.

25           Q. Did you evaluate the American Funds target date

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1 funds to see if in the second quarter of 2017, for 12:43:27  
2 example, they would be subject to removal under the  
3 removal criteria that you articulate in paragraph 31-A,  
4 B, C, D, and E of your report?

5 A. No.

6 Q. Okay.

7 And so as far as you know, the American Funds, if  
8 they were added as of Q1 of 2017, could have been  
9 subject to removal under the criteria you articulate in  
10 paragraph 31 just a few quarters later?

11 A. Like I said, I didn't do analysis. There are 12:43:59  
12 two types of analysis I did not do. I did not run the  
13 alternative list against the removal criteria because  
14 that was a separate exercise. And I did not use  
15 forward-looking data beyond the first quarter of 2017 to  
16 analyze any of the alternatives that we selected because  
17 that would have introduced hindsight bias, which I think 12:44:24  
18 is one of the most invalidating things you can do in  
19 this sort of analysis.

20 Q. What if you only use it a little bit?

21 A. I don't think you should --

22 MR. BERIN: Object to form.

23 THE WITNESS: I don't think you should use it at  
24 all, period.

25 MR. BLUMENFELD:

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1           Q. And if you use it a little bit it ruins the  
2 whole analysis?

3           MR. BERIN: Object to the form.

4           THE WITNESS: Yes, it does, actually. It does  
5 indeed because you're supposed to be putting yourself  
6 into the shoes of the committee at that point in time,      12:44:56  
7 and they didn't have access to that information. So  
8 yes, you can't cherry-pick information in the future and  
9 include it in an analysis and have it be valid on a  
10 contemporaneous basis. I believe I called out  
11 Mr. Wermers' report for that very issue in my  
12 rebuttal.

13           MR. BLUMENFELD:

14           Q. We've been going for a little while, and I'm  
15 going to switch to a different document in a minute.

16           Do you want to take a break?

17           A. Well, I wouldn't mind breaking for lunch. I  
18 don't care if we do it now or in 15, 30 minutes from      12:45:55  
19 now. That doesn't bother me.

20           Q. Why don't we do that now. I forgot, Mr. Marin,  
21 you're on the West Coast. Everybody else can stretch  
22 their legs a little bit, if that's okay with you, Mat.

23           MR. BERIN: Sure.

24           THE VIDEOGRAPHER: We're going off the record at  
25 12:46.

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1 (Lunch recess was taken.)

2 THE VIDEOGRAPHER: We are back on the record. The  
3 time is 1:17.

4 MR. BLUMENFELD:

5 Q. Mr. Marin, you understand you're still under  
6 oath; correct?

7 A. Yes.

8 Q. And you have the same obligation to tell the  
9 truth as if you were testifying live in front of a 13:17:58  
10 judge?

11 A. Yes.

12 Q. Wonderful.

13 Do you know what "survivorship bias" is?

14 A. Yes.

15 Q. What is it in the context of investments?

16 A. It means that when you're looking at a universe  
17 of funds, since some funds drop out for various reasons,  
18 performance reasons or because they don't track enough  
19 assets, that your collective or aggregate analysis of 13:18:27  
20 those funds will always be biased by the funds that  
21 stick around, and your historical information about  
22 those that perhaps didn't, you know, gets excluded at  
23 some point. So it has to do with the way in which the 13:18:58  
24 funds are analyzed mathematically and whether they stay  
25 in the universe of being analyzed or get removed from

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1 the universe.

2 Q. Because, for example, if you're sitting in 2024  
3 and looking at investments in 2016 or 2017, if you  
4 ignore investments that used to exist in 2016 and 2017  
5 but no longer exist now, you're going to skew the  
6 results of your analysis because you're not including 13:19:30  
7 all of the information that was available at the time;  
8 correct?

9 A. Correct.

10 Q. Did you do anything to ensure that the  
11 comparator target date funds that you looked at were not  
12 subject to concerns about survivorship bias?

13 A. I don't know that we specifically looked at any  
14 analysis to indicate levels of survivorship bias, but 13:19:54  
15 I'm not aware of any survivorship bias that came up in  
16 regard to those funds.

17 Q. You're saying you didn't see any survivorship  
18 bias issues, but you didn't look for it either?

19 A. We didn't see any, but I don't believe we had a  
20 specific test for survivorship bias, because normally  
21 this isn't the type of fund, or these aren't the types  
22 of funds when survivorship bias tends to come into play 13:20:28  
23 most often.

24 Q. Did you look to see whether there were target  
25 date funds in 2016, 2017 that existed then but that

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1 don't exist now?

2 A. No.

3 MR. BLUMENFELD: Okay. Mat, could you load up the  
4 three-year? 13:20:58

5 Q. While Mat's doing that, and it's getting loaded  
6 up, Mr. Marin, in your list of potential alternative  
7 funds, you don't include the Freedom Index Funds;  
8 correct?

9 A. No, we don't, because we considered them in the  
10 broader universe, and they did not meet the criteria for 13:21:27  
11 the -- for the filtering process. I've forgotten  
12 exactly which filter they triggered, but basically they  
13 got filtered out.

14 Q. So your conclusion was they would not be a  
15 suitable replacement for the Freedom Funds that were in  
16 the plan?

17 A. That was the conclusion we reached.

18 Q. Okay.

19 Mr. Marin, could you look at what's been marked and  
20 uploaded as Exhibit 5? Let me know when you have it in 13:21:57  
21 front of you.

22 A. I will. I have it up in front of me. 13:22:23

23 Q. Okay.

24 So I want to be clear, this is not a document that  
25 you have seen before, but it has data from your report,

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1 and I'm going to -- I'm not asking really a question  
2 now, but I want to orient you to what this document is.

3 We looked at the S&P Target Date Fund returns that you  
4 include in your report specifically with respect to the  
5 removal criteria for the Fidelity Freedom Funds in 13:22:58  
6 paragraph 31-B.

7 A. Uh-huh.

8 Q. And we looked at the performance of the  
9 comparator target date funds that you identify in  
10 Table 6 of your report --

11 A. Okay.

12 Q. -- as of December 31 of 2016, and this chart is  
13 the three-year annualized returns.

14 A. Okay.

15 Q. Following me so far?

16 A. I am, sure.

17 Q. So this showed that the Allspring target date 13:23:29  
18 funds that you consider as potential alternatives to the  
19 Fidelity Freedom Funds at 11 of 11 vintages that  
20 performed below the S&P Target Date Index as of a  
21 three-year basis as of December 31st of 2016.

22 Do you see that?

23 A. Yes.

24 Q. And this shows that the American Century One  
25 Choice target date funds that you considered as

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1 potential alternative target date funds for the Freedom  
2 Funds had eight out of nine target date funds -- that 13:23:59  
3 is, 89 percent that performed below the target date  
4 funds index.

5 Do you see that?

6 A. Yes.

7 Q. And it shows the American Funds, and it shows  
8 that none of them underperformed on a three-year basis  
9 compared to the S&P Target Date Index; right?

10 A. Yes.

11 Q. And then you look at the BlackRock Life target  
12 date funds, and you see that eight out of nine performed  
13 below the index?

14 A. Yes.

15 Q. And just so I'm clear, that means the Allspring 13:24:29  
16 target date funds would have been subject to monitoring  
17 or removal as of December 31 of 2016 using the criteria  
18 that you articulate in paragraph 31-B of your report;  
19 correct?

20 A. Well, this is only covering one quarter.

21 Q. Right, it is. That's why I said either  
22 monitoring or removal depending whether it's one quarter  
23 or five quarters. 13:24:59

24 A. Okay. So for this quarter you're correct.

25 Q. And same with the American Century One Choice?

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1 A. Yes.

2 Q. And the same with the BlackRock target date  
3 funds?

4 A. Yes.

5 Q. And the Fidelity Freedom Funds are listed there  
6 as well and the John Hancock Multi-Manager Funds?

7 A. Correct.

8 Q. Nine out of nine performed below the S&P Target 13:25:27  
9 Date Index?

10 A. Correct.

11 Q. And the JP Morgan SmartRetirement Funds, nine  
12 out of nine performed below the S&P target date index?

13 A. Yes.

14 Q. And the Nuveen Lifecycle Fund, ten out of ten  
15 performed below the S&P Target Date Index?

16 A. Correct.

17 Q. And the Principal LifeTime target date funds,  
18 12 out of 12 performed below the S&P Target Date Index?

19 A. Yes.

20 Q. And the Schwab, ten out of ten performed below 13:25:57  
21 the S&P Target Date Index?

22 A. Correct.

23 Q. And the T. Rowe Price Retirement, ten out of 11  
24 performed below the S&P target date index?

25 A. Yes.

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1           Q. And the Vanguard Retirement Funds, 11 out of 12  
2 performed below the S&P Target Date Index?

3           A. Correct.

4           Q. Did I miss any of the ones you included in your  
5 report as potential target date funds to the Fidelity  
6 Funds?

7           A. One, two, three, four, five, six, eight, nine,      13:26:25  
8 ten, 11, 12. Let me read them off to you, and you tell  
9 me if they're all here.

10          Q. Hold on one second, Mr. Marin. I just want to  
11 make sure that you're reading off which document so I  
12 can look at the other document.

13          A. I'm reading off Table 6 of my report.

14          Q. Very good, and I will look at Exhibit 5 to your    13:26:59  
15 deposition.

16          A. Okay. So American Funds, that's on there, yes.

17          Q. Yes.

18          A. Vanguard TDFs are on there. American Century  
19 is on there. T. Rowe Price is on there. BlackRock is  
20 on there. Schwab is on there. Allspring is on there.  
21 JP Morgan is on there. Fidelity Freedom suite is on  
22 there. Principal, did we have Principal on there?

23          Q. Principal is on there.                                13:27:30

24          A. Yes, it is. And John Hancock and Nuveen.

25          Q. So that's all of them?

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1 A. Yes. That's correct. It covers all of them.

2 Q. Great. Let's go back to Table 6 of your  
3 report.

4 The American Funds that you include in Table 6 of 13:27:58  
5 your report is a different share class of the American  
6 Funds than you include as part of the peer review when  
7 you're comparing the performance to the Fidelity Freedom  
8 Funds; correct?

9 A. Oh, as I said, the two are different analyses,  
10 so if they are different -- if there were different  
11 share class, if it was not the lowest price share class,  
12 that's not what we included in our alternative review. 13:28:26

13 Q. Okay.

14 And that means that you didn't do a comparison of  
15 the Fidelity Freedom Funds in terms of the replacement  
16 fund analysis as against the American Funds that were  
17 part of the target date deep dive; correct?

18 A. Correct.

19 Q. And you don't know if the Fidelity Freedom 13:29:00  
20 Funds that were in the plan actually would have scored  
21 better than the American Funds target date funds that  
22 were the subject of the target date deep dive; correct?

23 A. Correct.

24 Q. If one of the target date funds that you  
25 identify in Table 6 had a collective investment trust

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1           that was available, did you guys analyze that?           13:29:25

2           A. Let me just parse your question again. If  
3           you -- Say it one more time. I'll listen more  
4           carefully.

5           Q. Let me ask it a little more differently.

6           You said you were looking for the cheapest share  
7           class, generally speaking; correct?

8           A. Yes.

9           Q. If there was a cheaper version of a fund in a  
10          CIT, did you consider that, or did you limit your  
11          analysis to just mutual funds?

12          A. Well, the data gathering was the province of my   13:29:57  
13          associates, but my guess is that they would have not  
14          considered CITs.

15          Q. Okay.

16          Let's look at the JP Morgan Smart Retirement Funds  
17          that you included in your analysis.

18          You included the R6 suite; correct?                   13:30:25

19          A. Hold on. If I could find my magnifying glass.  
20          This printing is very small.

21          Q. Take your time.

22          A. Yes, R6 suite.

23          Q. Can you go to page 72 of your report, 72 of the   13:30:53  
24          PDF?

25          A. All right.

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1           Q. So if you're looking at the physical pages,  
2       it's page 11 of 86.

3           A. It's in the -- Is it in the data tables or in  
4       the pros?

5           Q. It is in Exhibit 3 to your report.

6           A. Sorry. Okay. So I have to go to the online -- 13:31:26  
7       the online version. One second. I didn't print off 150  
8       pages of data tables. So I'm going to go here and go to  
9       Exhibit 01. Correct?

10          Q. It is Exhibit 3.

11          A. Okay. Hold on. 13:31:58

12          Q. But if you're looking at the PDF page numbers,  
13       it should be page 72 --

14          A. Wait. You say it's Number 3. Isn't it  
15       Number 1?

16          Q. Exhibit 3.

17          A. Oh yes, but it's -- it's Exhibit 0001. Okay.  
18       That's the document.

19          Q. Correct.

20          A. And now it's Exhibit 3 of that document.

21          Q. You are correct. Sorry. I misunderstood your  
22       question.

23          A. And what page of the 204 are we looking at? 13:32:27

24          Q. 72.

25          A. Okay. One moment. Okay. I've got it. It's

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1 listed as Exhibit 3, and it's on page 11 of 86. Is that 13:32:57  
2 the right page?

3 Q. It is.

4 A. Okay. And what am I looking at?

5 Q. Line 626.

6 A. 626, JP Morgan Retirement Fund 2015 R6.

7 Q. This is the one you included in your analysis  
8 in Table 6; correct?

9 A. Yes, I believe it is.

10 Q. What's the inception date of that fund? 13:33:27

11 A. 11-3-14.

12 Q. That means it didn't pass the criteria that you  
13 articulated a little while ago about how you selected  
14 the share classes of the funds; correct?

15 A. It does not appear to meet the three-year  
16 threshold, so I would have to talk to my analyst as to  
17 why that one was selected. 13:33:58

18 Q. And just to be clear about it, let's go back to  
19 Table 6.

20 A. In my report?

21 Q. In your report.

22 A. Okay. Okay. 13:34:26

23 Q. The information that you include in Table 6 for  
24 the JP Morgan SmartRetirement Fund is not any of the  
25 actual metrics for the JP Morgan SmartRetirement R6

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1 suite. It's just how you ranked them. 13:34:58

2 Correct?

3 A. That is what I show in this Table 6, yes.

4 Q. Right.

5 The underlying data is in Exhibit 5 to your report

6 as you indicate in paragraph -- excuse me, not

7 paragraph -- Footnote 44?

8 A. Correct.

9 Q. But because the JP Morgan SmartRetirement R6  
10 suite didn't satisfy the three-year test, all of the  
11 data that's in Exhibit 5 with respect to the JP Morgan 13:35:29  
12 SmartRetirement Fund is going to be the wrong data  
13 because it's the data for the wrong share class of the  
14 fund; correct?

15 A. Well, like I said, I would have to check with  
16 my analyst as to why that passed the test and why it was  
17 at the three-year history it was included as the  
18 analytical choice for the score card. 13:36:00

19 So my only point is, you're showing me a table that  
20 shows an inception date of 11-4-13. Presumably that's  
21 correct, but I would want to check with them as to why  
22 he included this if that is, in fact, the correct  
23 inception date, and therefore it didn't meet the  
24 three-year criteria. It might be a reason because  
25 there's a lot of data here, and there's a lot of 13:36:28

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1 information that I would have to validate or verify with  
2 him.

3 Q. Oh, but didn't you do that in preparing your  
4 report?

5 A. Yes, we certainly did. We went through  
6 everything. But as you can imagine with 150 pages of  
7 details, there may have been an error or not, but I  
8 don't know without checking with him.

9 Q. Okay.

10 I don't have the chance to depose him. My  
11 opportunity is to depose you.

12 So as you sit here today, you don't know if the 13:36:58  
13 information that's regarding the JP Morgan  
14 SmartRetirement Funds that you include in Table 6 and in  
15 Exhibit 5 to your report is right or not?

16 A. I don't know. And if it was -- What I will say  
17 is that if it was highlighted and brought up in the  
18 rebuttal from Mr. Wermers, then it would have been  
19 double-checked by my analyst team, and my analyst team 13:37:27  
20 has verified to me, and we have gone over the fact that  
21 all of the exceptions that were noted were -- did not  
22 change the ultimate outcome of the analysis or my  
23 opinions.

24 Q. I'm sorry. You're saying after -- in response  
25 to Mr. -- Dr. Wermers' rebuttal report, you did some 13:37:56

1 additional checking?

2 A. Certainly we did. We looked at his report very  
3 carefully, and we analyzed all of his criticisms of my  
4 report, and this was one of his criticisms or something  
5 that he pulled out or said we made a mistake. We  
6 checked to see, Number 1, if we had indeed made a  
7 mistake, or there was some interpretational difference.

8 And we went through doing the analysis to see if indeed 13:38:28  
9 there was a minor error, that that error in any way  
10 changed the outcome of the analysis or was significant  
11 enough to alter the opinions, and we found none.

12 Q. Okay.

13 But if this wasn't in Dr. Wermers' report, rebuttal  
14 report, you don't have any recollection of looking at  
15 this question?

16 A. I do not at this moment.

17 Q. Okay.

18 And you don't recall as you sit here today this 13:39:00  
19 being an issue that was raised in Dr. Wermers' report?

20 A. He had a 73-page report, so the answer is no, I  
21 don't remember. He had many exceptions and many  
22 footnotes.

23 Q. Okay.

24 And the exhibit that we looked at before that  
25 showed the 2014 inception date for the JP Morgan

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1 SmartRetirement R6 class, that was your original report  
2 in this case; correct?

3 A. Yes.

4 Q. Okay. 13:39:28

5 Mr. Marin, can you go to Exhibit 5 to your report?  
6 I believe that's one of those things you'll need to look  
7 at electronically because it's in approximately page 153 13:39:58  
8 of the PDF.

9 A. Okay. I'm going to look for page 153 of the  
10 PDF. This is Exhibit 5, yes.

11 Q. Can you turn to specifically page 154? 13:40:27

12 A. Okay.

13 Q. At the top of the page has all of the details  
14 that led to the rankings that you include in Table 6 of  
15 your report with respect to the JP Morgan  
16 SmartRetirement R6 share class; correct?

17 A. Correct.

18 Q. And if you shouldn't have used the R6 share  
19 class because it didn't meet the criteria that you  
20 articulated to me, then that means the expense ratio 13:41:00  
21 information that you included in your analysis would be  
22 incorrect?

23 A. Well, it might not be incorrect for the R6 --  
24 for the R6 series. What we'd have to do is check to see  
25 whether or not the -- There's no reason from this chart, 13:41:25

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1           there's no reason to assume that the expense ratios are  
2           not the expense ratios for the JP Morgan SmartRetirement  
3           R6, the R6 funds. They may -- they should be for that  
4           fund. There's no reason to assume they're not for this  
5           fund.

6           Q. I understand.

7           But if the JP Morgan SmartRetirement R6 shouldn't       13:41:59  
8           have been included in your analysis, then you would pick  
9           a different share class of the JP Morgan SmartRetirement  
10          target date funds; correct?

11          A. Correct.

12          Q. And the different share class of the JP Morgan  
13          SmartRetirement Fund would have a different expense  
14          ratio?

15          A. That's correct.

16          Q. And would have different standard deviation?

17          A. Yes. They would have different numbers  
18          altogether. I mean, they might be the same, but that  
19          would be a coincidence. But generally if it was a       13:42:28  
20          different fund, it would have different numbers across  
21          the board.

22          Q. And have a different max drawdown?

23          A. Yes.

24          Q. And have a different annualized total return?

25          A. Yes.

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1 Q. And have a different Sharpe ratio?

2 A. Yes.

3 Q. And have a different Alpha?

4 A. Yes.

5 Q. And have a different information ratio?

6 A. Yes.

7 Q. Going back up to Table 6. And Mr. Marin, I'll 13:42:50

8 just -- to preview for you, if we go back to Exhibit 5,

9 so if you want to look at Table 6 in the hard copy and

10 then have Exhibit 5 available to you on the screen, that

11 might make things a little easier.

12 A. I have it.

13 Q. Great.

14 As part of your analysis in Table 6, do you do any 13:43:24

15 accounting as to whether one of these target date funds

16 is actively managed versus passively managed?

17 A. No.

18 Q. Do you do any analysis or accounting or factor

19 in how long the management has been associated with any

20 one of these particular target date funds?

21 A. Not in this score card, no.

22 Q. And what about Morningstar ratings?

23 A. No.

24 Q. What about whether there are investor inflows 13:43:57

25 or outflows from any of those target date funds?

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1 A. No.

2 Q. And am I right that this scoring methodology  
3 doesn't really bring any judgment to bear. It just  
4 spits out the number, and the funds with the highest  
5 number is the one that you believe should be the  
6 alternative?

7 A. Yes, with an exception. The exception is that 13:44:26  
8 we looked at qualitative issues that were readily  
9 identified in the IPS and considered them for all of  
10 these alternative funds. We merely did not quantify  
11 them into this score card. If we saw anything that was  
12 disqualifying, we would have eliminated it. 13:44:57

13 Obviously the target date exception you've made on  
14 the R6 JP Morgan fund has to be checked, but generally  
15 speaking there was nothing about any these funds that  
16 would have disqualified them from inclusion in this  
17 score card listing.

18 Q. And do you articulate anywhere in your report  
19 what qualitative issues you looked at to evaluate that  
20 all of these funds were ones that didn't present any  
21 qualitative concerns? 13:45:30

22 A. I discussed the qualitative review aspects in a  
23 couple of places in the report, in the pros, yes.

24 Q. Show me where.

25 A. Well, you can easily do it if you just submit a

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1 word search using the word "qualitative," and it will  
2 pop right up, and it's going to be a little harder for  
3 me to pluck it out without that.

4 Q. One place is paragraph 50. 13:46:00

5 A. Okay. So you have them. So you're saying  
6 paragraph 50. Okay. Yes.

7 Q. But all you say there is that the American 13:46:30  
8 Funds have an absence of qualitative concerns.

9 A. Correct.

10 Q. You don't articulate what concerns you looked  
11 at or evaluated or what about them was not concerning.

12 A. Well, like I said earlier in the report, in the  
13 pros, I discuss the qualitative issues. If you give me  
14 a moment, I will find it.

15 Q. Sure. 13:46:56

16 A. Okay. So in paragraph 25 I say that "The  
17 enumerated qualitative relate to the regulatory context  
18 and reputation of the investment manager, the degree of  
19 diversification, the scale of the fund, assets under  
20 management, and its general usefulness to participants."

21 Q. That's what you're talking about? 13:47:27

22 A. Well, that's the qualitative elements that are  
23 called out in the IPS, I believe.

24 Q. And that's fine.

25 But you're saying you looked at all of those issues

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1 for every one of the target date funds that you identify  
2 in Table 6?

3 A. That was the approach that we used, yes.

4 Q. And I want to be clear on this because you have  
5 said "we" sometimes, and I understand you had people  
6 doing data checking.

7 Did you look at the qualitative criteria that you 13:47:58  
8 list in paragraph 25 for all of the target date funds?

9 A. Yes, we did.

10 Q. Did you, Mr. Marin?

11 A. Well, "we" includes me, doesn't it?

12 Q. I don't know. I want to know what you did, not  
13 what somebody on your team did, because if somebody on  
14 your team did it and just reported to you thumbs up,  
15 we're all good, that's different than if you looked at  
16 these criteria for all of the target date funds.

17 A. I looked at all of the qualitative criteria 13:48:26  
18 that was available to me for these individual funds that  
19 we reviewed, yes.

20 Q. Including the reputation of each investment  
21 manager?

22 A. Yes.

23 Q. And your conclusion was that all of the  
24 investment managers had a good reputation?

25 A. Yes.

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1           Q. The degree of diversification you also looked  
2           at?

3           A. Yes.

4           Q. And you concluded that all of these target date  
5           funds had a good degree of diversification?

6           A. Yes.

7           Q. And you also looked at general usefulness to       13:48:58  
8           participants?

9           A. Yes.

10          Q. And you concluded that all of these target date  
11          funds had general usefulness to participants?

12          A. Yes.

13          Q. Could you go, sir, back to Exhibit 5 to your       13:49:47  
14          report? Sorry, Mr. Marin. It's your Deposition  
15          Exhibit 1.    13:49:56

16          A. Deposition Exhibit 1. Okay, and Exhibit 5 of  
17          that report?

18          Q. Correct, which starts on page 152.

19          A. I have it in front of me.

20          Q. Great.

21          This is again the analysis that you did that you  
22          report the outcome of in Table 6; correct?

23          A. Correct.

24          Q. I didn't see the underlying math.                      13:50:28

25          How did you get from the Exhibit 5 to the results

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1       in Table 6?

2           A. It was -- Table 6 is a ranking.

3           Q. I know.

4           A. So I'm not sure I understand your question.

5           Q. Did you use a program?

6           Did somebody eyeball it and say this one looks like  
7           the best in this category, so I'm going to give it the  
8           highest rank, a 12?

9           A. I believe that was done through an Excel  
10          spreadsheet that had an optimization model built into      13:51:00  
11          it.

12          Q. Got it.

13          Can you read Footnote 1?

14          A. Okay.

15          Q. I'm sorry. I'm looking at page 153 of the PDF.

16          A. I -- You're saying the Footnote 1 annotation      13:51:28  
17          under "Expense Ratio"?

18          Q. Correct.

19          A. Okay. I'm looking for where the footnote shows  
20          up. I'm just going to keep flipping down in Exhibit 5.

21          There it is. "Expense ratio figures for the potential  
22          alternative funds is the prospective gross expense ratio   13:51:58  
23          as of July 2024 provided by Morningstar direct."

24          Q. And what page are you looking at?

25          A. That would be your page 164 of 204.

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1 Q. It's internal page 12 of 12 to Exhibit 5.

2 A. 12 to 12, yes.

3 Q. Okay.

4 And this is the methodology you used to evaluate  
5 the expense ratios of the different funds? 13:52:28

6 A. The data on the expense ratios on a historical  
7 basis was not available to us, so for the purposes of  
8 this exercise, as we annotate it here in the report, we  
9 use the gross expense ratios as of July 2024 because  
10 that was what was available to us. We could not extract  
11 the historical expense ratios.

12 Q. Got it.

13 Can you go to -- Let's go to the first one, I  
14 guess, back to page 153 of 204. 13:53:19

15 A. Okay.

16 Q. You see the Fidelity Freedom Funds that are  
17 listed there in the middle of that page?

18 A. Yes.

19 Q. All right.

20 You know, sir, that these are not the Fidelity  
21 Freedom Funds that's were actually in the Quanta plan;  
22 correct?

23 A. Correct.

24 Q. And you used the investor share class of the  
25 Fidelity Freedom Funds in your analysis here instead of 13:53:57

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1           the cheapest share class of the Fidelity Freedom Funds  
2           in the analysis in Exhibit 5 and Table 6?

3           A. Yes, we did. We used -- well, we indicate  
4           exactly which ones we used because the ticker symbols  
5           are right there.

6           Q. Right.

7           And the ticker symbols are not the one in the plan  
8           and not the cheapest share class of the Fidelity Freedom  
9           Funds either?

10          A. It was not intended to be the one in the plan  
11          because the one in the plan we already determined needed 13:54:29  
12          to be terminated.

13          And as far as being the cheapest one, this is why I  
14          wonder about that JP Morgan situation. It was the  
15          cheapest one available that had a track record that  
16          needed to meet the criteria.

17          Q. Okay.

18          So you didn't do an analysis to see, using your 13:54:59  
19          ranking methodology that you described in your report,  
20          to see whether the Fidelity Freedom Funds that were in  
21          the plan actually would have scored higher than any of  
22          the other target date funds that you were considering as  
23          potential alternatives?

24          A. No. That was a separate exercise. We did not  
25          include the Freedom Fidelity Funds that were in the plan

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1       in this ranking. This was a ranking of alternatives.

2           Q. Got it.

3           MR. BLUMENFELD: Mat, can we upload the document  
4           that starts "FISS" in the name?

5           MR. McKENNA: Yeah, one second. I'll put it now. 13:55:53

6           MR. BLUMENFELD:

7           Q. Yeah. It should be uploading now, Mr. Marin.

8           A. So I'm going to a new document?

9           Q. Yes.

10          A. Hold on. This is document 0006? 13:56:23

11          Q. It is.

12          A. Okay. Downloading it. All right. I have  
13          this.

14          Q. Great.

15           So before you look at this specific document, could  
16          you go back to your paper copy of your report, 13:56:57  
17          specifically paragraph 2-A?

18          A. Paragraph 2-A. All right.

19          Q. You see in paragraph 2-A you say that you were  
20          asked to "review and evaluate the Fidelity Freedom  
21          Funds," open parentheses, open quote, "Freedom Funds,"  
22          closed quote, closed parentheses, "a suite of 14 target 13:57:28  
23          date funds" with a footnote?

24          A. Yes.

25          Q. Okay.

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1           That footnote is citing to a Fidelity website;  
2  
3           correct?

4           A. Correct.

5           Q. We downloaded that website and printed it.

6           That's what this exhibit is.

7           A. Okay.

8           Q. Do you have it in front of you?

9           A. I do.

10          Q. Can you identify for me on this document which      13:57:54  
11          Fidelity Freedom Funds you include in your analysis in  
12          Table 6 of your report?

13          A. My answer to that is I would need to check with  
14          my analyst, but I can probably go through this and look  
15          for the symbols and find the ones that I included. You  
16          want me to go through that? That will take some time by   13:58:25  
17          the size of this report.

18          Q. I suspect you could do it pretty quickly,  
19          because if you could find one, the others will probably  
20          be pretty close by.

21          A. Okay. Then I got to get out of this exhibit,  
22          go to the other exhibit, get the reference number, so  
23          hold on.

24          Q. Tell you what, Mr. Marin. I'll make it easier  
25          for you. Let me go to Exhibit 5 of your report --

26          A. Okay.

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1 Q. -- and I'll give you the Fidelity Freedom 2030  
2 Fund that you include in your analysis in Exhibit 5 and 13:59:00  
3 in Table 6 to your report. That ticker symbol is  
4 "FFFEX."

5 A. "FFFEX." Okay. So -- and I'm looking for a  
6 2030; correct?

7 Q. Correct.

8 A. I don't see it. Could it be "FFKEX?" 13:59:56

9 Q. No. I can give you the 2050 fund. I can give  
10 you the 2015 fund. 14:00:28

11 A. So again, I would have to talk to my analyst,  
12 but I don't see it here unless it is mistyped as  
13 "FFKEX," in which case I see it.

14 Q. Okay.

15 Let's -- Sticking with this document that you're 14:01:00  
16 looking at now, could you turn to PDF page 5 of 10?

17 A. Got it.

18 Q. You see there's a Fidelity Freedom 2015 Fund  
19 Class K6, for example?

20 A. Yes.

21 Q. And the inception date on that fund is 2003?

22 A. Yes.

23 Q. And the fees on that fund are 26 basis points 14:01:29  
24 as of June 30th of 2024?

25 A. Well, let's just see. Does it say the date of

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1 the fees in the footnote?

2 Q. It's the date of the document.

3 A. Okay. Fine. Then that's what it is, sure.

4 Q. That was for the 2015 fund -- correct? -- 26 14:02:00

5 basis points?

6 A. If the Freedom Fidelity -- Fidelity Freedom  
7 2015 Fund Class K6 shows 26 basis points, yes.

8 Q. Okay.

9 Now, could you go back to Exhibit 5 of your report?

10 This is -- sorry, Mr. Marin. You have to use the  
11 electronic version.

12 A. Got it.

13 Q. Okay. 14:02:32

14 A. So I'm going back to Exhibit -- give me the  
15 page number again of 204.

16 Q. 153.

17 A. Okay. I've got 153. I've got Fidelity, yes. 14:02:53

18 Q. Fidelity Freedom 2015 Fund that you utilized in  
19 your report had an expense ratio of 52 basis points;  
20 correct?

21 A. Yes.

22 Q. Okay.

23 I want to switch gears now a little bit, Mr. Marin. 14:03:26

24 MR. BLUMENFELD: Alec, I don't remember how long  
25 we've been going, if you want to take a break;

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1 otherwise, we can keep going.

2 MR. BERIN: Why don't we take a short break now. I  
3 think we've been going 50 minutes or so.

4 THE VIDEOGRAPHER: Going off the record. The time  
5 is 2:03.

6 (A recess is taken.)

7 THE VIDEOGRAPHER: We are back on the record. The 14:12:31  
8 time is 2:12.

9 MR. BLUMENFELD:

10 Q. Mr. Marin, you understand you're still under  
11 oath?

12 A. Yes.

13 Q. And you have the same obligation to tell the  
14 truth as if you were testifying live in front of a judge  
15 or a jury?

16 A. Yes.

17 Q. Great.

18 Mr. Marin, do you know what "revenue sharing" is?

19 A. Yes.

20 Q. In connection with mutual funds and retirement  
21 plans? 14:12:59

22 A. Yes.

23 Q. Okay. Great.

24 So I want you to assume that the Fidelity Freedom  
25 Funds that were in the plan paid revenue sharing that

1 covered all of the plan's recordkeeping fees.

2 A. Okay.

3 Q. And if the plan switches or had switched to the  
4 American Funds, the plan would have to pay for those  
5 recordkeeping fees separately.

6 Do you understand what I'm asking you to assume?

7 A. Yes.

8 Q. Okay.

9 How would you factor that into your analysis in  
10 either paragraphs 31 or in the fund-selection criteria  
11 that's reflected in Table 6 of your report?

12 A. Well, my general sense about revenue-sharing  
13 plans is that they are very murky, and they come up 14:13:54  
14 mostly because of 12b-1 fees which are distribution fees  
15 which don't really apply in the case of retirement plans  
16 in the same way they do for other distributors. That's  
17 what gives rise to this, quote unquote, rebate that's  
18 received.

19 There is only one reference in the IPS to revenue  
20 sharing, and it basically just makes the statement that 14:14:26  
21 revenue sharing has to be fully disclosed, and there is  
22 no disclosure that I have seen anywhere in the IPS as to  
23 how they should be handled, and there's no disclosure in  
24 any of the quarterly reports from the consultants as to  
25 how they would be incorporated.

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1                   So for purposes of this analysis and to do the  
2 monitoring work, I see no way to incorporate them fairly 14:14:59  
3 because it is a murky area, and I don't know what's  
4 happened to the fees. They may or may not have been  
5 applied to the benefit of participants. They may or may  
6 not have been disclosed adequately to the committee.  
7 Therefore, for purposes of this analysis, there was no  
8 way they should have been or could have been included in  
9 the analysis. 14:15:30

10                  Q. Okay.

11                  When you say you don't know how the revenue sharing  
12 was applied here, why don't you know?

13                  MR. BERIN: Object to the form.

14                  THE WITNESS: Because there's no indication of it  
15 on the documentation evidence that has been shared with  
16 me.

17                  MR. BLUMENFELD:

18                  Q. And so if you looked at the deposition  
19 testimony, you might know how the revenue sharing was 14:15:57  
20 handled?

21                  MR. BERIN: Object to form.

22                  THE WITNESS: I didn't look at the depositions, so  
23 I can't say.

24                  MR. BLUMENFELD:

25                  Q. Okay.

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1           And if you looked at the recordkeeping agreement,  
2           you might know how the revenue sharing was handled?

3           MR. BERIN: Object to form.

4           THE WITNESS: Again, I don't know because I haven't  
5           looked at the recordkeeping agreement.

6           MR. BLUMENFELD:

7           Q. Okay.

8           Do you have an understanding as to how other plans  
9           address the concept of revenue sharing might pay for  
10          recordkeeping fees that would have to be paid for  
11          elsewhere?

14:16:29

12           MR. BERIN: Object to form.

13           THE WITNESS: Not necessarily. I think that varies  
14          from fund to fund, so I don't know. And more  
15          importantly, I don't know how they would or wouldn't  
16          incorporate that into the performance analysis.

17           What I do know is that in this instance, the  
18          quarterly reports which are provided by the investment  
19          manager or the investment consultant don't incorporate  
20          them or call them out in any way to tell whether they  
21          are or not, you know, blended in somehow into the  
22          overall picture, so I don't know how they could be  
23          utilized for this analysis.

14:16:56

24           MR. BLUMENFELD:

25           Q. Okay.

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1           What about in Table 6?

2           A. What about Table 6?

3           Q. Where you're identifying a suitable replacement  
4           investment option instead of the Fidelity Freedom Funds.

5           A. Once again, I don't know. Like I said, those      14:17:29  
6           are individually negotiated and individually arranged,  
7           like I said, some murky arrangements.

8           Q. You know there are entire lawsuits about how  
9           plans utilize revenue sharing; correct?

10          A. No, I don't know. That's not something I'm  
11          aware of.

12          Q. Oh, okay.

13          You know that plans can select different share  
14          classes of investment options that pay different amounts  
15          of revenue sharing?    14:17:59

16          A. I know that plans can pick different amounts,  
17          different share classes for sure. I don't know how much  
18          relevance the revenue share has or hasn't because that  
19          would depend on the individual discussions.

20          Q. What does that mean, "individual discussions"?

21          A. Meaning the discussions when the plan is making  
22          its selection.

23          Q. Right.

24          But you are, in Table 6, are purporting to make the  
25          selection that the Quanta plan fiduciaries should have      14:18:26

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1 made as of January 1 of 2017; correct?

2 A. I -- yes, and I can only use the information  
3 that is available to me in this case through Morningstar  
4 to make those determinations, and that information is  
5 not made available in a quantitative way.

6 Q. Got it.

7 And so to be more maybe blunt about it, if the  
8 Fidelity Freedom Funds had received revenue sharing that  
9 equaled \$5 million per year -- and I'm not saying they 14:19:00  
10 did, but if they did, and the American Funds target date  
11 funds didn't receive any revenue sharing at all, that  
12 would be something that would need to be accounted for  
13 in any analysis as to whether the plan was better off in  
14 the American Funds or the Fidelity Freedom Funds;  
15 correct?

16 MR. BERIN: Object to the form.

17 THE WITNESS: If there's an arrangement that is  
18 negotiated individually for a given fund to provide some 14:19:28  
19 incremental rebate to the -- that changes the expense  
20 ratio of the fund on a net basis, that should be a  
21 relevant factor to be included. But again, I question  
22 whether or not it can be included, and if so, why isn't 14:19:55  
23 it included in the numerical assessment being used by  
24 all the people that evaluate universes of funds and that  
25 consultants use to make advisory reports to their

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1 clients like Quanta.

2 MR. BLUMENFELD:

3 Q. I want to make sure, Mr. Marin. You said, I  
4 think, that if there is revenue sharing it is something  
5 that should be considered, and that is relevant, but you 14:20:27  
6 don't understand why consultants don't do so?

7 MR. BERIN: Object to the form.

8 THE WITNESS: That's not exactly what I said. What  
9 I said was it's hard to tell how revenue sharing is  
10 handled. And the reason it's called out the way it is  
11 in the IPS is that this qualifies as what I characterize  
12 as a murky arrangement, and it's murky in several ways. 14:20:58  
13 It's murky about exactly how it's handled, where the  
14 funds go, what it offsets, who gets the benefit of it.  
15 That's why it's called out that way, and then what  
16 effect it has on the decision-making process.

17 And it is so confused and potentially arbitrary and  
18 potentially inconsistent from one time period to the  
19 next because it's governed by contract law here with the 14:21:30  
20 funds not governed by their requirement to report their  
21 results in a way that's consistent with what the  
22 consultant uses to do its evaluation. I think it's very  
23 challenging to include it in an analysis and falls  
24 almost more as a qualitative issue than a quantitative  
25 issue, and that's why it's not included in the 14:21:59

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1 quantitative analysis.

2 MR. BLUMENFELD:

3 Q. And did you include that in the quantitative  
4 analysis?

5 A. No, because there wasn't sufficient information  
6 to do that on these funds.

7 Q. When you say "there wasn't sufficient  
8 information to do that on these funds," are you  
9 referring to funds that you include in Table 6?

10 A. Yes.

11 Q. You know there was sufficient information with  
12 respect to the Fidelity Freedom Funds that were in the  
13 plan?

14 MR. BERIN: Object to the form.

15 THE WITNESS: The information I was given to do my  
16 analysis did not include revenue-sharing information.

17 MR. BLUMENFELD:

18 Q. Got it.

19 And you know that Dr. Wermers included information  
20 about revenue sharing on the Fidelity Freedom Funds and  
21 on the American Funds and on the T. Rowe Price Funds and  
22 on the JP Morgan Funds; correct?

23 A. I saw in his rebuttal that he included more 14:22:57  
24 revenue-sharing information than I was aware of, and I  
25 again hadn't identified it as an issue because it didn't

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1 appear in anything other than that one statement in the  
2 IPS that I referenced.

3 Q. You know that Dr. Wermers also included  
4 revenue-sharing discussion related to the American  
5 Funds, the T. Rowe Price Funds, JP Morgan Funds, and the 14:23:30  
6 Freedom Funds in his initial report?

7 A. I would have to go back and look at his initial  
8 report. I read it, reviewed it quite a while ago.

9 Q. Why don't you do that? That's Exhibit 3 to  
10 your deposition. 14:23:49

11 MR. BERIN: You're looking at a particular page?

12 MR. BLUMENFELD: Yeah. I'm just waiting for  
13 Mr. Marin to pull it down. Sorry, Alec. It's PDF  
14 page 41.

15 THE WITNESS: Is it Exhibit 003, did you say?

16 MR. BLUMENFELD:

17 Q. It is.

18 A. Okay. I have that up right now. Which page am 14:24:27  
19 I looking at?

20 Q. Page 41 of 200 of the PDF.

21 A. Okay. I'm on page 41.

22 Q. Do you see Table 3?

23 A. I do.

24 Q. And that's Dr. Wermers' discussion of revenue  
25 sharing; correct?

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1 A. Oh yes.

2 Q. Part of it?

3 A. Very good. I see it.

4 Q. You didn't respond to that or disagree with any  
5 of that in your rebuttal report; correct? 14:24:59

6 A. That's correct.

7 MR. BLUMENFELD: Okay. Mat, can we load up the  
8 Complaint?

9 MR. McKENNA: Yeah. Just one second. Should be 14:25:11  
10 available now.

11 MR. BLUMENFELD:

12 Q. Mr. Marin, can you download or open the  
13 complaint which has been marked as Exhibit 7 to your  
14 deposition? 14:25:53

15 A. I've got it.

16 Q. Great. The Complaint is a document that you  
17 considered in forming the opinions that you express in 14:26:28  
18 your report; correct?

19 A. Yes.

20 Q. Can you turn to paragraph 24?

21 A. Okay.

22 Q. In the middle of that paragraph there's a  
23 sentence that says, "All TDFs are inherently actively 14:26:56  
24 managed because managers make changes to the allocations  
25 to stocks, bonds, and cash over time."

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1           Do you see that?

2           A. Yes.

3           Q. You don't in your report express an opinion on  
4           that issue at all; correct?

5           A. Correct.

6           Q. Paragraph 25, could you turn to that, please?

7           A. I've got it.

8           Q. The second sentence of that paragraph says that

9           " Fidelity Management & Research Company, Fidelity, is       14:27:26  
10           the second largest TDF provider by total assets."

11           Do you see that?

12           A. Yes.

13           Q. And you know, in fact, that that's true?

14           A. Again, I don't have the data in front of me,  
15           but it sounds true, yes.

16           Q. And you also know that the Fidelity Freedom  
17           Funds are the largest target date funds that Fidelity  
18           offered during this time period --

19           A. Yes.

20           Q. -- correct? Okay.

21           The next sentence says that "Among its target date  
22           offerings, Fidelity offers the riskier and more costly  
23           Freedom Funds -- which it calls the active suite."

24           Do you see that?

25           A. Yes.

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1           Q. And then it goes on to say "the less risky and  
2 less costly Freedom Index Funds --" which the Complaint  
3 calls the index suite.

4           Do you see that?

5           A. Yes.

6           Q. And you did not compare the risk or the cost of  
7 the Fidelity Freedom Funds, which the Complaint called      14:28:30  
8 the active suite, against the Fidelity Index suite;  
9 correct?

10          A. That's correct. That was outside my scope.

11          Q. Well, it was outside your scope because you  
12 decided not to include the Freedom Index Funds in any of  
13 your analyses?

14          A. There were reasons why the Freedom Index Fund  
15 didn't qualify. That would be the only reason why they      14:28:59  
16 weren't considered in my analysis.

17          Q. What I'm asking, sir, that was a decision, a  
18 judgment call that you made, not something that  
19 Plaintiff's Counsel told you to do?

20          A. That's correct.

21          Q. Okay.

22          Towards the bottom of paragraph 25, I think it's  
23 the last sentence, the Complaint alleges "Defendants      14:29:28  
24 should have considered the merits and features of all  
25 available TDF options, but they instead failed to

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1 compare the active and index suites as well as other  
2 available TDFs, including actively managed TDFs that  
3 offer expected returns sufficient to justify the  
4 associated costs and risk."

5 Do you see that?

6 A. Yes.

7 Q. You saw in the target date deep dive that 14:29:56  
8 Quanta did consider the merits and features of a bunch  
9 of different TDF options; correct?

10 A. Yes. Well, when you say "considered," they  
11 looked at them angly. I don't know if they considered  
12 them as in purchasing them or adopting them, but they  
13 certainly had that data made available to them by  
14 Ascend.

15 Q. And -- That's fine. Good.

16 And then the Complaint also says, "they instead 14:30:27  
17 failed to compare the active and index suites."

18 Do you see that?

19 A. Are we still on "25"?

20 Q. We are.

21 A. Oh yes, "but they instead failed to compare the  
22 active --" okay. Yes, I see it.

23 Q. And you also did not compare the active and  
24 index suites; correct?

25 A. I did not.

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1 Q. Okay.

2 And this paragraph says, "Defendants should have  
3 considered the merits and features of all available TDF  
4 options."

5 But you actually didn't consider all TDF options 14:30:59  
6 either; correct?

7 A. For purposes of the alternative selection?

8 Q. Correct.

9 A. We looked at the full universe available on  
10 Morningstar and then eliminated them using those filters  
11 that I mentioned before.

12 Q. The only ones whose performance you looked at  
13 was 12 of them; correct?

14 A. Only those which made it through the filtering 14:31:29  
15 process, correct. What I'm saying is, that was not  
16 arbitrary decision. It was, you know, a data-management  
17 decision.

18 Q. Can we go to paragraph 29? 14:31:55

19 A. Okay.

20 Q. The first sentence of paragraph 29 says, "The  
21 active suite and the index suite are sponsored by the  
22 same investment management company and share a  
23 management team."

24 Do you see that?

25 A. Yes.

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1 Q. You know that that's true; correct?

2 A. Yes.

3 Q. Okay.

4 The next sentence says, "But while the active suite  
5 invests predominantly in actively managed Fidelity  
6 mutual funds, the index suite places no assets under 14:32:26  
7 active management and instead invests in Fidelity funds  
8 that simply track market indices."

9 Do you see that?

10 A. Yes.

11 Q. And there's a Footnote 4 there too; correct?

12 A. Yes. "Per Morningstar, the active suite's  
13 underlying holdings are 88.8 percent actively managed by  
14 asset weight."

15 Q. Paragraph 29 also said, "The active suite is  
16 also dramatically more expensive than the index suite";  
17 correct?

18 A. Correct.

19 Q. And you didn't evaluate that; right? 14:32:57

20 A. Well, we did not look at the index suite  
21 because it didn't meet the criteria.

22 Q. Right.

23 So you didn't look to see whether the active suite  
24 was dramatically more expensive than the index suite?

25 A. I did not analyze that statement, no.

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1 Q. Okay.

2 You didn't analyze whether it's true or not?

3 A. Correct.

4 Q. Okay.

5 And you also didn't analyze whether the American  
6 Funds target date funds were also dramatically more 14:33:27  
7 expensive than the index suite?

8 A. Say that one one more time.

9 Q. You didn't evaluate whether the American Funds  
10 target date funds were also dramatically more expensive  
11 than the index suite?

12 A. No, I did not.

13 Q. You didn't analyze whether any of the target  
14 date funds that you evaluated in your Table 6 were  
15 dramatically more expensive than the index suite?

16 A. If for some reason the index suite did not make 14:33:58  
17 it through the filters, then that did not occur.

18 Q. As you sit here today, you don't know why the  
19 index suite didn't make it through the filters?

20 A. I would have to talk to my analyst, but I don't  
21 know of any reason why other than one of the mechanical  
22 filters kicked it out of the system.

23 Q. The next sentence -- the next part of the  
24 sentence, "the active suite is riskier in both its  
25 underlying holdings and its asset-allocation strategy." 14:34:26

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1           Do you see that?

2           A. Yes.

3           Q. You did not evaluate that issue either;

4           correct?

5           A. No.

6           Q. No, you did not?

7           A. No, I did not.

8           Q. And you also didn't evaluate whether the  
9           American Funds target date funds, for example, had  
10          underlying holdings in an asset-allocation strategy that  
11          were riskier than the Fidelity Index target date funds?

12          A. No, I did not.

14:35:00

13          Q. Okay.

14           Paragraph 30 says that "The active suite chases  
15          returns by taking levels of risk that render it  
16          unsuitable for the average retirement investor including  
17          plan participants."

18           Do you see that?

19           A. Yes.

20          Q. Did you evaluate whether that was true?

21          A. No. Wasn't relevant to my analyses.

14:35:29

22          Q. The next sentence says, "At first glance the  
23          equity glide paths of the active suite and index suite  
24          appear nearly identical."

25           Do you see that?

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1 A. Yes.

2 Q. You didn't evaluate that either; correct?

3 A. No.

4 Q. And you didn't evaluate whether the American  
5 Funds target date funds also had a glide path that was  
6 nearly identical to the Fidelity target date funds?

7 A. I did not.

14:35:59

8 Q. Okay.

9 The next sentence says, "But the active suite  
10 subjects its assets to significantly more risk than the  
11 index suite through multiple avenues."

12 Do you see that?

13 A. Yes.

14 Q. Okay.

15 You didn't evaluate whether that was true either;  
16 correct?

17 A. Correct.

18 Q. The next sentence says, "At the underlying fund  
19 level, where the index suite invests only in index funds  
20 that track market indices, the active suite primarily  
21 features funds with a manager deciding what securities  
22 to buy and sell and in what quantities." 14:36:30

23 And again, you didn't evaluate that?

24 A. No.

25 Q. No, you did not?

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1 A. No, I did not.

2 Q. Mr. Marin, could you look at paragraph 33? 14:36:45

3 A. Okay.

4 Q. In paragraph 33 the Complaint alleges, "At all 14:37:32  
times across the glide path, the activity suite's top  
5 four domestic equity positions were and are in Fidelity  
6 Series Funds created for exclusive use in the Freedom  
7 Funds."  
8

9 Do you see that?

10 A. Yes.

11 Q. And then it goes on to say that "three of which  
12 have dramatically trailed their respective indices over  
13 their entire expected lifetimes."

14 Do you see that?

15 A. Yes. 14:38:00

16 Q. You didn't analyze that in your report;  
17 correct?

18 A. No.

19 Q. No, you did not?

20 A. No, I did not.

21 Q. Okay.

22 The next sentence specifically talks about the  
23 large cap stock Fund.

24 Do you see that?

25 A. Hold on a second. Is this still on page 14?

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1 Q. Yeah.

2 A. The stock, large cap value funds.

3 Q. Not that one yet. The first one was the large 14:38:29  
4 cap stock funds.

5 A. Oh yes. Okay. Go ahead.

6 Q. You didn't evaluate whether the sentence that  
7 is contained there about the large cap stock funds was  
8 true or not?

9 A. I did not.

10 Q. And it didn't matter to your analysis?

11 A. No, it did not.

12 Q. It didn't matter to your analysis about whether  
13 the Freedom Funds should be removed from the plan, and  
14 it didn't matter to your analysis about which would be  
15 the most appropriate target date funds to offer for plan 14:38:58  
16 participants?

17 A. No, it did not.

18 Q. The next one is the Stock Selector Large Cap  
19 Value Fund.

20 And again, you didn't evaluate the allegations that  
21 are in that sentence either; correct?

22 A. No, I did not.

23 Q. Because it didn't matter to your opinions about  
24 whether the Freedom Funds should be removed from the  
25 plan or what the most appropriate Freedom -- excuse

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1 me -- what the most appropriate target date funds should  
2 be for the plan?

3 A. No, it did not. 14:39:29

4                   Q. The next one is the Intrinsic Opportunities  
5 Fund.

6 Do you see that?

7 A. Yes.

8 Q. And again, same thing, you didn't evaluate that  
9 either in connection with evaluating whether the Freedom  
10 Funds should be removed from the plan or what the best  
11 investment option would be for plan participants?

12 A. No, I did not.

13 Q. Sorry. Did somebody say something? I know I 14:40:01  
14 coughed, so I didn't hear what it was. All right.  
15 We'll press ahead.

16                   The next sentence says that "While the portfolio of  
17                   the active suite is diversified among 32 underlying  
18                   investment vehicles, the three aforementioned funds  
19                   represent over 19 percent of the 2040 through 2065  
20                   vintages."

21 Do you see that?

22 A. Yes.

23 Q. You didn't evaluate that issue at all either;  
24 correct?

25 A. No, I did not.

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1           Q. Paragraph 34 says, "Poor performance of the  
2 underlying funds in the active suite is not limited to  
3 the largest positions. Of the 25 actively managed  
4 Fidelity Series Funds in the active suite portfolio, 11  
5 have failed to beat their respective benchmarks over  
6 their lifetime."

7           Do you see that?

8           A. Yes.

9           Q. You did not evaluate whether that was true or  
10 not?

11          A. No, I did not.

14:40:59

12          Q. Because it wasn't relevant to your opinions  
13 about whether the Fidelity Freedom Funds should be  
14 removed from the plan, and it wasn't relevant as to what  
15 target date options should be offered as investment  
16 options?

17          A. That's correct.

18          Q. You also did not evaluate any of the underlying  
19 funds for any of the other target date funds that you  
20 evaluate in Table 6; correct?

21          A. Say that one more time?

22          Q. I'm going to ask it slightly differently.

23          You also, in Table 6 of your report, identify a  
24 number of other target date funds; correct?                 14:41:30

25          A. Correct.

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1           Q. You didn't evaluate the performance of any of  
2         the underlying funds in any of those target date funds  
3         to see how many of them underperformed their benchmarks  
4         over their lifetimes or over three years or five years  
5         or any other time period?

6           A. No, I did not.

7           Q. Paragraph 35 says that "As of the start of the  
8         class period, several of the underlying funds used  
9         within the active suite portfolio lacked performance      14:42:00  
10         history sufficient to support a meaningful analysis."

11           Do you see that?

12           A. Yes, I do.

13           Q. You didn't evaluate whether that was true  
14         either?

15           A. No, I did not.

16           Q. And then it goes on to say, "Accordingly, no  
17         prudent fiduciary could have appropriately evaluated  
18         these funds."

19           You didn't evaluate that either?

20           A. No, I did not.

21           Q. The next sentence continuing into the chart  
22         says, "Indeed, as illustrated in the table below, 13 of      14:42:27  
23         24 funds --" and then there's Footnote 7 -- "failed to  
24         meet the basic criteria of at least a five-year  
25         performance history -- meaning, almost two thirds of the

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1 funds in the active suite portfolio would have failed  
2 one of the most basic fiduciary requirements."

3 Do you see that?

4 A. I do.

5 Q. You didn't evaluate whether any of that was  
6 true?

7 A. I did not.

8 Q. And none of that matters to the opinions that  
9 you expressed in your report about whether the Fidelity  
10 Freedom Funds should be removed as investment options or 14:43:00  
11 what target date options should be offered to plan  
12 participants; correct?

13 A. No, I did not.

14 Q. And you also did not evaluate, for example,  
15 whether the American Funds had a lot of underlying funds  
16 that lacked a five-year performance history?

17 A. No, I do not.

18 Q. And the same with the other target date funds  
19 that you include in table 6 of your report, you didn't  
20 evaluate whether all of them had underlying funds that 14:43:27  
21 had less than a five-year performance history?

22 MR. BERIN: Object to the form.

23 THE WITNESS: I did not do that analysis.

24 MR. BLUMENFELD:

25 Q. Okay. Excuse me.

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1           Can you go to paragraph 36?

2           A. Okay.

3           Q. Do you see that in front of you?                          14:43:58

4           A. I do.

5           Q. This shows a comparison of the glide path of  
6           the Fidelity Freedom Funds against the Freedom Index  
7           Funds -- that is, the active suite against the index  
8           suite; correct?

9           A. Correct.

10           Q. You didn't do an analysis to see whether this  
11           chart that's contained in paragraph 36 was true or not?

12           A. I did not.

13           Q. Paragraph 37 says, "This chart considers only  
14           the mix of stocks, bonds, and cash"; right?                 14:44:28

15           A. Yes.

16           Q. And then it goes on to say, "A deeper  
17           examination of the sub-asset classes of the active  
18           suite's portfolio, however, exposes the significant  
19           risks its managers take to boost returns."

20           Do you see that?

21           A. I do.

22           Q. And again, you didn't evaluate whether that  
23           sentence in paragraph 37 is true or not?

24           A. No, I did not.

25           Q. And you didn't consider or evaluate whether all

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1 of the allegations in paragraph 37 were true or not?

2 A. Just reading it through quickly.

14:45:02

3 Q. Take your time.

4 A. No, I did not.

5 Q. Okay.

6 The next sentence in here says, "Across the glide

7 path, the active suite allocates approximately 1.5

8 percent more of its assets to riskier international

9 equities than the index suite and also has a higher

10 exposure to riskier asset classes like emerging markets 14:45:29

11 and high yield bonds."

12 A. Yes.

13 Q. I'm sorry. Say that again?

14 A. Yes.

15 Q. Okay. Great.

16 Do you need a drink of water, Mr. Marin?

17 A. Let me take a drink.

18 Q. I'm going to do the same. You and I have been

19 talking a lot. Alec had it easy.

20 A. Okay. I'm ready.

21 Q. You didn't evaluate whether the active suite

14:45:57

22 had 1.5 percent more of its assets to riskier

23 international equities than the index suite; right?

24 A. No, I did not.

25 Q. And you didn't evaluate whether the active

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1 suite had higher exposure to riskier asset classes like  
2 emerging markets and high yield bonds?

3 A. No, I did not.

4 Q. And you also didn't evaluate whether the  
5 American Funds had 1.5 percent more of its assets to  
6 riskier international equities than the Fidelity Freedom  
7 Funds?

8 A. No, I did not.

14:46:29

9 Q. And you also didn't evaluate whether the  
10 American Funds target date funds had a higher exposure  
11 to riskier asset classes like emerging classes and high  
12 yield bonds than the Fidelity Freedom Funds?

13 A. No, I did not.

14 Q. Paragraph 38 of the Complaint says that the  
15 active suite managers were encouraged to participate in  
16 active asset allocation.

14:47:00

17 Do you see that?

18 A. Yes.

19 Q. Did you evaluate whether that was true?

20 A. No, I did not.

21 Q. Did you evaluate whether all of the other  
22 target date funds that you include in Table 6 of your  
23 report also engaged in the same asset allocation as the  
24 Fidelity Freedom Funds?

14:47:29

25 A. Not to the way -- to the extent it's indicated

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1 here in Number 38.

2 Q. Did you do it at all?

3 A. Well, we're talking about glide path now, and  
4 evaluating the glide path is something, as I said 14:47:56  
5 before, we looked at to see what the glide paths looked  
6 like relative to one another. And therefore, there was  
7 some assessment made that they did not create any  
8 outlier glide paths that would have created a problem or  
9 disqualified them from consideration.

10 Q. As far as you were concerned, the glide paths  
11 on all of the target date funds were close enough that 14:48:26  
12 it didn't signal that one was any better or worse than  
13 any other?

14 A. Not in a meaningful way, correct.

15 Q. Okay.

16 The next sentence in paragraph 38 describes a March  
17 2018 Reuters report.

18 Do you see that?

19 A. Yes, "Fidelity freedom, investors, lost  
20 confidence in the active suite." Yes, I see that. 14:49:00

21 Q. And you don't discuss or rely on or consider  
22 that March 2018 Reuters report in your analysis at all;  
23 correct?

24 A. No. No, I did not.

25 Q. And that's because it didn't affect your

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1       opinions about whether the Fidelity Freedom Funds should  
2       be removed from the plan or what the best target date  
3       funds would be to offer to plan participants would be?

4           A. No. So long as the amount of the asset change   14:49:28  
5       was -- would not disqualify the funds in any way from  
6       the size criteria, the answer is no.

7           Q. One sentence down says, "While many TDF  
8       managers increase their exposure to riskier investments  
9       in an effort to improve returns, the president of  
10      research firm Target Date Solutions cautions that the   14:49:57  
11      active suite has gone further down this path than its  
12      peers."

13           A. I do.

14           Q. Did you relate whether that was true or not?

15           A. No, I did not.

16           Q. And it didn't matter to the opinions that you  
17      expressed in this case; correct?

18           A. Correct.

19           Q. You also didn't evaluate whether the American  
20      Funds increased their exposure to riskier investments  
21      even more than the Fidelity Freedom Funds; correct?

22           A. Correct.

23           Q. Paragraph 39 of the Complaint, could you turn   14:50:39  
24      to that, sir?

25           A. I have it.

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1 Q. Great.

2 In paragraph 39 Plaintiffs allege that, "Far from  
3 being the," quote, "lifetime saving solution Fidelity  
4 promotes, because its funds assume more risk, the active  
5 suite exposes investors to significant losses in the 14:50:59  
6 event of market volatility like the downturn experienced  
7 during the COVID-19 pandemic."

8 Do you see that?

9 A. I do.

10 Q. Did you evaluate that?

11 A. No, I did not.

12 Q. Can you turn to paragraph 44? 14:51:17

13 A. Okay.

14 Q. Paragraph 44 alleges that "The flow of funds to  
15 or from target date families is one indicator of the 14:51:57  
16 preferences of investors at large."

17 Do you see that?

18 A. Yes.

19 Q. Did you offer an opinion on that in your  
20 report?

21 A. I did not.

22 Q. Did you evaluate that issue either with respect  
23 to the Fidelity Freedom Funds or any of the comparative  
24 target date funds?

25 A. No, I did not.

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1 Q. Lower down in paragraph 44 there's a sentence 14:52:33  
2 that says, "At the same time, investor confidence in the  
3 active suite has deteriorated from 2016 to 2020 while  
4 the index suite gained approximately 40 billion in net  
5 inflows. The active suite lost an estimated 35 billion  
6 in net outflows."

7 Do you see that?

8 A. Yes.

9 Q. You didn't evaluate whether that was true or  
10 not; correct?

11 A. I did not.

12 Q. And it didn't matter to your opinion whether 14:52:59  
13 the Fidelity Freedom Funds should be removed or what  
14 investments would be appropriate for plan participants?

15 A. No, it did not.

16 Q. Mr. Marin, do you have an understanding, sir, 14:53:55  
17 as to how many defined contribution retirement plans 14:53:57  
18 offer more than one target date suite to participants?

19 A. No, I don't. No.

20 Q. Okay.

21 So you don't know if it's -- if any of them do or  
22 if half of them do or if 1 percent of them do?

23 A. I do not.

24 Q. Okay.

25 (Pause in the proceedings.)

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1 MR. BLUMENFELD:

2 Q. Mr. Marin, you didn't evaluate any other target 14:56:00  
3 date funds except for the ones that are specifically  
4 identified in your report; correct?

5 A. Correct.

6 MR. BLUMENFELD: Mat, can we mark the rebuttal  
7 report?

8 MR. McKENNA: Yes. One second.

14:56:26

9 THE WITNESS: You want me to call up another  
10 report?

11 MR. BLUMENFELD:

12 Q. Yeah. This will be Exhibit 8 to your  
13 deposition, Mr. Marin.

14 MR. McKENNA: Should be available now.

14:56:55

15 (Pause in the proceedings.)

16 THE WITNESS: Okay.

17 MR. BLUMENFELD:

18 Q. Can you turn to paragraph 24 of your rebuttal  
19 report?

14:57:27

20 MR. BLUMENFELD: Sorry, Alec. Do you have it?

21 MR. BERIN: I do. Thanks for asking.

22 THE WITNESS: I have it.

23 MR. BLUMENFELD:

24 Q. Okay.

25 In paragraph 24 you criticize Dr. Wermers' report

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1 for pointing to favorable Morningstar medalist ratings;  
2 correct?

3 A. Correct.

4 Q. And you say they "represent the projections of  
5 Morningstar's analyst team and analyst commentary on the 14:57:57  
6 Freedom Funds"; correct?

7 A. Correct.

8 Q. First of all, do you understand that other plan  
9 fiduciaries also use Morningstar medalist ratings in  
10 evaluating the investment options that they are  
11 including as investment options or considering to  
12 include as investment options?

13 A. I don't know that for a fact, but it wouldn't  
14 surprise me that somebody else does look at it.

15 Q. Actually, let me ask it the other way. 14:58:29  
16 You can't identify any plans that don't use  
17 Morningstar as part of their analysis in selecting funds  
18 or in monitoring their forms?

19 MR. BERIN: Object to form.

20 THE WITNESS: I cannot.

21 MR. BLUMENFELD:

22 Q. Okay.

23 The second sentence here says that "The medalist  
24 ratings are forward-looking projections."

25 Do you see that?

Page 209

1 A. Yes.

2 Q. What does that mean?

3 A. They are an attempt to predict how a fund will 14:58:55  
4 do based on their assessment of the fund. They're  
5 projections.

6 Q. Meaning it's how Morningstar believes the fund  
7 is likely to do in the future, not based necessarily on  
8 how the funds had done in the past?

9 A. Well, presumably they don't have anything but  
10 the past or the positioning of the funds to make that  
11 consideration. But yes, they are forward-looking  
12 projections. 14:59:30

13 Q. And then you go on to say that those medalist  
14 ratings "do not necessarily portend good performance";  
15 right?

16 A. That's correct.

17 Q. What's the significance of that?

18 A. That's my way of saying that referencing the  
19 medalist reports from Morningstar is not a good way to  
20 assess the performance, the actual performance that has  
21 been incurred by the plan from a given fund that's in 15:00:00  
22 the plan.

23 Q. You switched tenses on me there, Mr. Marin, and  
24 so I apologize if I'm being dense, but these are  
25 forward-looking projections, so of course they're not

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1 going to reflect past performance.

2 A. Well, not necessarily so. They're  
3 forward-looking projections which are based on  
4 something; right? And what they're based on, since no 15:00:30  
5 one has a crystal ball, they're based on the prior  
6 performance and the structure of the funds as perceived  
7 by Morningstar's analyst team that would lead them to  
8 conclude what they conclude about the forward-looking  
9 possibilities of that fund.

10 Q. Okay.

11 A. I don't think I changed tenses there. 15:00:58

12 Q. When you say they "don't necessarily portend  
13 good performance," you cite to the Kiplinger's report;  
14 correct?

15 A. Correct.

16 Q. Which says that "the medalist ratings --" at  
17 least according to your interpretation of that  
18 publication -- "the medalist ratings have been unable to  
19 consistently identify funds that outperform"?

20 A. That's what it says, yes.

21 Q. And what's the basis of that?

22 A. Well, the Wermers report is trying to say that 15:01:30  
23 the Morningstar medalist ratings are good predictive  
24 tools, and the Kiplinger publication would say that  
25 hasn't been the case.

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1 Q. And what's the significance of that?

2 A. The significance of that is I'm not sure that  
3 the use of the Morningstar medalist reports are  
4 necessarily helpful to evaluating whether to retain a  
5 fund or not, especially since that's not something  
6 that's specified in the IPS.

15:02:00

7 Q. Okay.

8 Putting aside the IPS aspect of it, do you have any  
9 analysis that said that the medalist ratings that  
10 Morningstar uses were worse predictors of future  
11 performance than the analysis that you go through in  
12 paragraph 31-A through E of your report or in Table 6 of  
13 your report?

15:02:27

14 A. Well, "31" does not portend to be a predictive  
15 framework. It's an evaluative framework; correct? And  
16 so the answer is no, I don't know how to make that  
17 comparison you're asking me to make because that's not  
18 what I do in the first prong of this analysis.

15:02:59

19 Q. Let's come back to that then. Let's talk about  
20 the second part of the analysis.

21 Is the medalist rating better or worse or the same  
22 as the analysis that you go through in Table 6 to  
23 identify a suitable target date fund for the plan?

24 A. I have not done that assessment, so I have no  
25 way of knowing.

15:03:29

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1           Q. And more generally, you haven't done an  
2           assessment as to whether the methodology that you  
3           describe and utilize in Table 6 is actually good at all  
4           in predicting which funds are going to be the best funds  
5           over a subsequent time period?

6           MR. BERIN: Object to the form.

7           THE WITNESS: I did not -- I did not do a research  
8           study that would give me strong empirical evidence as to  
9           predictive quality, so the answer is no.

15:03:58

10           MR. BLUMENFELD:

11           Q. Did you do any analysis that would give you any  
12           predictive analysis or results?

13           A. Well, I -- What I've said before is that these  
14           are time-honored ways in the industry to evaluate the  
15           selection process in funds, and they're very consistent  
16           with the selection methodology that the IPS calls out,      15:04:25  
17           so in that sense I do believe they're a valid way of  
18           going about making a selection of alternative fund. And  
19           there's no guarantee that they will produce the best or  
20           perfect result, but they are well respected ways of  
21           evaluating funds for selection.

22           Q. Much like the Morningstar medalist ratings;  
23           correct?

24           A. I have no reason to believe that the                  15:04:59  
25           Morningstar medalist ratings are better or worse than my

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1 methodology. All I know is that Kiplinger calls that  
2 out as not being particularly valuable as a way of  
3 predicting future performance.

4 Q. Got it.

5 Mr. Marin, you did not conclude in your report that  
6 the Fidelity Freedom Funds should have been replaced by  
7 the Vanguard target date funds; correct?

8 A. That was not our conclusion.

9 Q. And you did not conclude in your report that 15:05:59  
10 the Fidelity Freedom Funds should have been replaced by  
11 the T. Rowe Price target date funds?

12 A. That was not our conclusion. Again, if you  
13 look at the -- well, let me just take a quick look at  
14 the score card to see what it produces.

15 Q. The only one that you concluded that should  
16 replace the Fidelity Freedom Funds was the American 15:06:27  
17 Funds target date funds.

18 A. Yeah, but I was just looking to see where those  
19 two stacked up against the American Funds. Okay. But  
20 you're right. I did not recommend.

21 Q. And the same with the JP Morgan target date  
22 funds; correct?

23 A. I did not recommend.

24 Q. I forgot if I asked this already, Mr. Marin, or 15:06:45  
25 not.

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1           Did you evaluate whether any of the other target  
2        date funds that you described in Table 6 had any  
3        outflows of investors or inflows from investors?       15:07:27

4           A. No, unless they like I said were disqualified  
5        for overall size, no.

6           Q. Great.

7           Can you turn to paragraph 27 of your report?

8           A. Which report?

9           Q. Sorry. Good question. Your rebuttal report  
10       which I believe has been marked as Exhibit 8.

11          A. So the one that we're already on here?

12          Q. Yeah.   15:07:59

13          A. Which paragraph, "26"?

14          Q. "27."

15          A. "27," sorry. Okay. I've got it.

16          Q. In paragraph 27 you criticize Dr. Wermers;  
17        correct?

18          A. Yes.

19          Q. I guess you do that in a lot of places in this  
20        report, but in paragraph 27 --

21          A. Not as much as he did of mine, but okay.       15:08:29

22          Q. You say that in the last sentence, "More  
23        germane to those decisions is Exhibit 7 to the Wermers  
24        report which shows a year-over-year decrease in large  
25        plans offering the Freedom Funds from 2016 to 2018."

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1           Do you see that?

2           A. That's at the very end.

3           Q. Yeah. You can read the whole thing to  
4           yourself.

15:09:00

5           A. Whole thing to myself first, so give me a  
6           moment.

7           Q. Sure.

8           (Pause in the proceedings.)

9           THE WITNESS: Okay. I've read it. What was your  
10          question?

15:09:43

11          MR. BLUMENFELD:

12          Q. Bear with me one second. I lost something on  
13          my end that I need to find.

14          A. Uh-huh.

15          Q. In paragraph 27 at the end you say, "More  
16          germane to those decisions is Exhibit 7 to the Wermers  
17          report which shows a year-over-year decrease in large  
18          plans offering the Fidelity Freedom Funds from 2016 to  
19          2018."

15:10:06

20          A. Yes.

21          Q. What do you mean "more germane"?

22          A. Well, I think it's more relevant to the issue  
23          that he's bringing up because he's using flows as some  
24          sort of an indicator of whether or not the Freedom Funds  
25          should or shouldn't have been retained, which as we know

15:10:28

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1       is not really part of my analytical framework. But  
2       since he brought it up in his report, I chose to rebut  
3       it in this section, and what I've said is that I think      15:10:55  
4       that Exhibit 7 showing the year-over-year decrease in  
5       large plan offerings of Freedom Funds from '16 to '18  
6       was more important than the other references he made to  
7       flows.

8           Q. Okay.

9           More important in evaluating whether the Freedom  
10      Funds should be removed from the plan and what the best  
11      investment option would be for participants?                  15:11:27

12           A. Yes.

13           Q. Okay.

14           Let's turn to Exhibit 7 to Dr. Wermers' report.  
15      That would be, Mr. Marin, Exhibit 3 to your deposition.  
16      We looked at it earlier.

17           A. Okay. I'm in Exhibit 3. What page?

18           Q. Page 115 of 200, which is Exhibit 7 to  
19      Dr. Wermers' report that you were just citing and  
20      referring to in your rebuttal report.                          15:12:00

21           A. Page 115 you said?

22           Q. Page 115 of 200, yes.

23           A. All right. I have Exhibit 7.

24           Q. Okay.

25           And this is the exhibit that you were just

Page 217

1 referring to in your rebuttal report; correct?

2 A. Yes.

3 Q. And I want to make sure that we avoid any 15:12:30  
4 hindsight, because as you said, that's important in the  
5 analysis.

6 And what you see as of 2015, according to

7 Dr. Wermers' report, there were 145 large plans that  
8 offered the Fidelity Freedom Funds; correct?

9 A. Correct.

10 Q. And in 2016, did that number go up or down? 15:12:55

11 A. That went up by six.

12 Q. So there were six more plans that invested in  
13 the Fidelity Freedom Plans as of 2016 than had been as  
14 of 2015?

15 A. Correct.

16 Q. And then when you get to 2017, that number  
17 drops to 150; correct?

18 A. Correct.

19 Q. Meaning between 2016 and the end of 2017, there  
20 was only one plan that removed its investment in the  
21 Fidelity Freedom Funds? 15:13:29

22 MR. BERIN: Object to form.

23 THE WITNESS: Only one plan shown on this report,  
24 yes.

25 MR. BLUMENFELD:

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1 Q. Yes.

2 And then if you look at the American Funds target  
3 date funds, in 2016 how many plans were there?

4 A. Let me find the American Fund. In which year?

5 Q. 2016.

6 A. Fifteen.

7 Q. And when you get to 2017, how many were there? 15:13:57

8 A. Twenty-nine.

9 Q. Okay.

10 And obviously that increase of 14 plans did not all  
11 or mostly come from plans that were invested in the  
12 Fidelity Freedom Funds; correct?

13 MR. BERIN: Object to form.

14 THE WITNESS: Well, the numerical analysis would  
15 indicate that at most one of those 14 plans, and I don't  
16 know if that's even the case. 15:14:29

17 MR. BLUMENFELD:

18 Q. You and I agree on that.

19 And the time period that you say the Fidelity  
20 Freedom Funds should have been removed is at the  
21 beginning of 2017; correct?

22 A. That's correct.

23 Q. So what happens after that really would be  
24 irrelevant to your analysis of whether the Freedom Funds  
25 should have been removed from the plan or what

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1 investment options should have been offered instead?

2 MR. BERIN: Object to form.

15:14:59

3 THE WITNESS: Yes. I would just point out one

4 thing, and that is I'm responding here, rebutting

5 Mr. Wermers' assessment, which indeed did cover a longer

6 period of time than my analytical framework for my first

7 prong of the removal analysis covered. So in my

8 response to him I referenced a period that was longer

9 than I would have in my framework analysis because I'm

15:15:25

10 responding to his observations.

11 MR. BLUMENFELD:

12 Q. Understood.

13 You didn't look at anything starting essentially Q1

14 of 2017 or thereafter, so in your analysis you wouldn't

15 have looked at any information about other investors in

16 that time period just like you wouldn't look at any

17 other information from that time period?

18 A. That is correct.

19 Q. Okay.

20 If we could have, I'm going to say, 20 minutes or

21 so? We are close to being finished, but I'd like to be

15:15:58

22 able to circle up with my team, if that's okay with you,

23 Alec, and Mr. Marin?

24 A. It's fine with me.

25 THE VIDEOGRAPHER: We are going off the record.

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1           The time is 3:16.

2           (A recess is taken.)

3           THE VIDEOGRAPHER: We are back on the record. The  
4           time is 3:36.

5           MR. BLUMENFELD:

6           Q. Mr. Marin, welcome back.

7           A. Thank you.

8           Q. You understand you're still under oath?

9           A. I do.

10          Q. And you have the same obligation to tell the  
11           truth as if you were testifying live in front of a  
12           judge?

13          A. Yes.

14          Q. Great.

15:36:30

15           So I think I asked you this question earlier today,  
16           but I just want to make sure, and I don't get another  
17           chance, so I want to make sure I ask it now.

18           When it comes to the alternative investments that  
19           you evaluated, the only ones that you concluded would  
20           potentially be appropriate for the Quanta plan are the  
21           ones that you include in Table 6; correct?

22          A. Correct.

23          Q. And so the Freedom Index Funds, you don't know  
24           why, what criteria of yours they didn't satisfy, but you  
25           know they didn't satisfy some criteria, so they wouldn't

15:36:56

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1       be appropriate for the Quanta plan as an investment  
2       option, in your opinion; correct?

3           A. Correct.

4           Q. Okay.

5       Let's switch gears.

6       MR. BLUMENFELD: Mat, can you upload those 5500s?

7       MR. McKENNA: Yes. I'll get them up in a second.

8           (Pause in the proceedings.)

9       MR. McKENNA: They're all up now as Exhibits 9, 10,  
10 and 11.

11       MR. BLUMENFELD: Thank you.

12       Q. So Mr. Marin, just to orient you, we've                  15:38:27  
13       uploaded exhibits to your deposition 9, 10, and 11 which  
14       are Form 5500s. That's the plan annual report for the  
15       Bear Stearns profit sharing plan --

16       A. Got it.

17       Q. -- from 2005, 2006, 2007.

18       A. Okay.

19       Q. You were in this plan during this time period;  
20       correct?

21       A. Yes.

22       Q. And the reason we included the 2005, -6, and -7  
23       ones is just to show you that the investment options                  15:39:00  
24       essentially were the same during that time period.

25       A. Okay.

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1           Q. But if you go back to the back of the 5500,  
2           you'll see the investment options.

3           A. Which one do you want me to click on?

4           Q. The 2005 one.

5           A. That's 0009?

6           Q. It is Exhibit 9 to your deposition, correct.

7           And I'm going to have to get you to the right page.

8           A. Okay. Hold on. Okay. I've got it. What         15:39:29  
9           page?

10          Q. I'm working on it. It starts on page 27 of  
11          125.

12          A. This says it's 50 pages. What page of the 50?

13          Q. Oh, I'm sorry. I opened the wrong one so bear   15:39:59  
14          with me. I'll find the right one. Okay. Page 18 of  
15          50.

16          A. Okay. I've got it.                                   15:40:28

17          Q. This lists several investment options in the  
18          Bear Stearns defined contribution plan; correct?

19          A. It does.

20          Q. The first one is the Dreyfus Premier S&P STARS  
21          Fund.

22          Do you see that?

23          A. Wait a minute.

24          Q. In the middle of the page.

25          A. Yes, Dreyfus Premier S&P STARS Fund.

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1 Q. And there's the Dreyfus Premier Intrinsic Value  
2 Fund?

3 A. Correct.

4 Q. The Pacific Investment Management Company Total 15:40:59  
5 Return Fund?

6 A. Yes.

7 Q. The Columbia Acorn Fund?

8 A. Yes.

9 Q. The Royce Low-Priced Stock Fund?

10 A. Yes.

11 Q. The American EuroPacific Growth Fund?

12 A. That's the next page.

13 Q. It is.

14 A. Got it.

15 Q. The Vanguard PRIMECAP Fund?

16 A. Yes.

17 Q. The Dreyfus Premier Alpha Growth Fund?

18 A. Yes.

19 Q. The Longleaf Partners Fund?

20 A. Yes.

21 Q. The Putnam Asset Allocation Balanced Portfolio? 15:41:27

22 A. Yes.

23 Q. The Dreyfus Premier International Value Fund?

24 A. Yes.

25 Q. The Ostein Financial Alert Fund?

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1 A. Yes.

2 Q. The Dreyfus Premier Core Bond Fund?

3 A. Yes.

4 Q. The Massachusetts Financial Services -- that's  
5 MFS -- Value Fund?

6 A. Yes.

7 Q. The Dreyfus Premier Limited Firm High Yield  
8 Fund?

9 A. Yes.

10 Q. The Fidelity Advisor Growth Opportunities Fund?

11 A. Yes.

12 Q. The Dreyfus Premier High Income Fund? 15:41:57

13 A. Yes.

14 Q. The Barclays Global Investors Equity Index  
15 Fund?

16 A. Yes.

17 Q. The State Street Global Advisors Aggressive  
18 Strategic Balanced Fund?

19 A. Yes.

20 Q. The State Street Global Advisors Moderate  
21 Strategic Balanced Fund?

22 A. Yes.

23 Q. And the State Street Global Advisors  
24 Conservative Balanced Fund?

25 A. Yes.

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1           Q. And then on the next page the BlackRock Large  
2 Cap Core Equity Fund?

3           A. Yes.

4           Q. So first of all, at the bottom of page 19 of 50 15:42:28  
5 it identifies the aggressive, moderate, and conservative  
6 funds.

7           Do you see that?

8           A. Yes.

9           Q. Those are what you were describing as lifestyle  
10 funds; correct?

11          A. They seem like they might be, yes.

12          Q. But they don't actually adjust their allocation  
13 over time. A participant just gets to decide if they  
14 want to invest more aggressively or moderately or  
15 conservatively. 15:43:00

16          Correct?

17          A. Correct.

18          Q. Do you recall, having seen the list of these  
19 funds, which ones you were invested in?

20          A. No.

21          Q. Okay.

22          But there was no target date funds offered in this  
23 plan; correct?

24          A. Right.

25          Q. And would it surprise you to know that many of

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1       these funds would fail the monitoring criteria that you  
2       articulate in paragraph 31-A, B, C, D, E of your report  
3       in this case?

4                    MR. BERIN: Object to the form.                   15:43:27

5                    THE WITNESS: I have no way of knowing.

6                    MR. BLUMENFELD:

7                    Q. I know.

8                    I'm asking, would it surprise you to know that?

9                    MR. BERIN: Same objection.

10                  THE WITNESS: You know, would it surprise me to  
11                  know that? No. It wouldn't surprise me because I --  
12                  This, one, was a long time ago, and two, I was not  
13                  paying particular attention to these funds, and I  
14                  certainly wasn't applying this framework against them in   15:43:58  
15                  my assessment of those funds at the time.

16                  MR. BLUMENFELD:

17                  Q. What difference does it make that it was a long  
18                  time ago?

19                  A. Well, the difference it makes is that I'm just  
20                  saying I'm not familiar enough with these funds to tell  
21                  you whether it would surprise me. The State Street  
22                  Global Advisors is a reputable firm. They're balanced      15:44:25  
23                  funds. As shown here, I'm sure were reasonably well  
24                  managed, but that's all I know about them from just  
25                  looking at this list. I could not have picked these out

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1 if you'd asked me to name funds that were in the Bear  
2 Stearns funds.

3 So that's why the issue of responding the way you  
4 have asked me about whether I would be surprised is hard  
5 to answer. I don't have any reason to be surprised or 15:44:58  
6 not surprised, to be honest with you.

7 Q. Well, I guess I'm a little confused then  
8 because I thought the criteria that you were using and  
9 applying in your report is the criteria that retirement  
10 plan individuals utilize on a regular basis.

11 MR. BERIN: Object to the form.

12 THE WITNESS: What I'm saying is that that is a  
13 mechanism which -- and that is a framework that is  
14 typically used in the industry. 15:45:30

15 MR. BLUMENFELD:

16 Q. Right.

17 And so why would not -- why would not that  
18 mechanism be used at the firm that you were the head of?

19 MR. BERIN: Object to the form of the question.

20 THE WITNESS: As we've established, I was not the  
21 head of Bear Stearns. I was the head of the buy side  
22 operation, which is Bear Stearns Asset Management, and  
23 this 401K plan was not one that I was involved with as a 15:45:58  
24 fiduciary. I was involved as a participant. And there  
25 is simply no way for me to recall what was going on with

these individual funds and how they were assessed at the time because I was not part of that assessment group.

3 MR. BLUMENFELD:

4 Q. You weren't the ex officio member at the Bear  
5 Stearns committee?

6                   A. No. I said I was the ex officio at the  
7                   Deutsche Bank, Deutsche Asset Management Funds.

8 Q. Okay.

9                   And if we looked at the Deutsche 401K plan, would  
10                  it surprise you to know that the Deutsche 401K plan also  
11                  had investment options that would fail the criteria you  
12                  articulate in 31-A, B, C, D, E?

13 MR. BERIN: Object to the form of the question. 15:46:58

14                   THE WITNESS: I have no way of answering that  
15                   question because it's -- I have -- Number 1, I have  
16                   nothing in front of me to talk to on those issues, and  
17                   then I would have to look at the performance back in  
18                   that time frame, so I can't answer your question.

19 MR. BLUMENFELD:

20 Q. But you know what criteria Deutsche would have  
21 applied to monitoring the investment options?

22 A. I know the sorts of criteria they would apply. 15:47:29

23 I'm not -- I don't recall their IPS. I would have to

24 review their IPS to refresh my understanding of their

25 IPS and the criteria that they enforced upon themselves

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1 for their review process and monitoring process.

2 Q. And as you sit here today, you don't know if  
3 the monitoring criteria that Deutsche applied or that 15:47:56  
4 Bear Stearns applied was similar or different from the  
5 monitoring criteria that you described in  
6 paragraphs 31-A, B, C, D, and E of your report?

7 MR. BERIN: Object to the form of the question.

8 THE WITNESS: What I'm comfortable saying, since I  
9 am familiar with those firms and how they managed their  
10 affairs, I'm comfortable saying that most of the  
11 criteria that I used to evaluate the performance and do 15:48:27  
12 the monitoring of the funds in my report are similar to  
13 the criteria that were used by those two firms.

14 Again, I have to account for a difference in time  
15 frames. This would have been '05 to '07 for Bear  
16 Stearns. For Deutsche Bank it would have been '99,  
17 2000, 2001, but I can't respond more specifically than 15:48:58  
18 that.

19 MR. BLUMENFELD:

20 Q. I'm confused again when you referenced time  
21 period, because my understanding was that your opinion  
22 about the appropriate monitoring criteria doesn't change  
23 with what time period we're talking about or what year  
24 we're talking about, does it?

25 A. Actually, you misinterpreted what I said. What

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1 I would say is that the fundamentals that are listed 15:49:25  
2 here were fundamentals that would be applied in any time  
3 frame. The specifics of the IPS and what mechanisms the  
4 committee was charged to use to look at might change  
5 over time because there certainly is some change in a  
6 company's perspective about how to evaluate their plan 15:49:56  
7 participants' funds, or participant funds, and that  
8 would have to be incorporated in the review. The  
9 fundamentals of tracking against the benchmark, the  
10 fundamentals of doing peer review and looking at the  
11 median of the peer results, the fundamentals of using  
12 the type of analysis of Sharpe ratio, Alpha, information 15:50:25  
13 ratio, those would not change. Those are fairly  
14 consistent. But what's called for in the IPS might  
15 change over time just as we've seen it does in the case  
16 of Quanta. It gets refined and tweaked at the ends, and  
17 the approach is dictated. And what is important is what  
18 is called for in the IPS and then, like I've said,  
19 overlaid with what is the practice in the industry at 15:50:59  
20 the time.

21 Q. So I want to make sure that I understand this  
22 correctly.

23 You said that you were confident that at Deutsche  
24 Bank and at Bear Stearns they would have looked at  
25 performance versus peer groups. They would have looked

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1 at Sharpe ratios, they would have looked at information  
2 ratios, and they would have looked at performance versus  
3 benchmarks but maybe not in the same way that you look 15:51:27  
4 at them in paragraph A, B, C, D, E; is that right?

5 A. There might have been some subtle differences  
6 called for in the IPS based on the thinking of the  
7 committee at the time.

8 Q. Got it.

9 And the way that Bear Stearns and Deutsche Bank  
10 might have looked at investment options by looking at  
11 peer groups and ratios might have been the way that  
12 Quanta looked at performance against benchmarks and peer  
13 groups and Sharpe ratios and information ratios; 15:51:59  
14 correct?

15 A. It may have been, yes.

16 Q. Okay.

17 I don't think I have any further questions for you,  
18 Mr. Marin.

19 A. Okay. Thank you.

20 MR. BLUMENFELD: Are you done, Alec?

21 MR. BERIN: I attempted since you told me I had it  
22 easy earlier, but I do not have any questions for  
23 Mr. Marin. Thank you.

24 THE VIDEOGRAPHER: We are going off the record at  
25 3:52 p.m., and this concludes today's testimony given by 15:52:25

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1 Richard A. Marin. The total number of media units used  
2 was five and will be retained by Veritext Legal  
3 Solutions.

4 THE REPORTER: Mr. Berin, do you want a copy?

5 MR. BERIN: Yes, and standard delivery is fine.

6 But if you have a rough to send around, that would be  
7 great too.

8 MR. BLUMENFELD:

9 Q. Mr. Marin, thank you for your time and have a  
10 good weekend.

11 A. You too. Bye-bye.

12 THE REPORTER: Do you want a rough too,  
13 Mr. Blumenfeld?

14 MR. BLUMENFELD: Yes. And thank you for your time  
15 and help today.

16 (Whereupon the documents referred to are marked by  
17 the reporter as Defense Exhibits 1 through 11 for  
18 identification.)

19 (The proceedings concluded at 3:52 p.m.)

20 (Signature on following page.)

21

22

23

24

25

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1

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2

I declare under penalty of perjury under the laws  
3 of the State of California that the foregoing is true  
4 and correct.

5

6

Executed at \_\_\_\_\_, California,  
7 on \_\_\_\_\_.

8

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\_\_\_\_\_

12

RICHARD A. MARIN

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1 STATE OF CALIFORNIA ) ss

2

3 I, BONNIE ANN GROSE, CSR 11703, do hereby declare:

4

5 That, prior to being examined, the witness named in  
6 the foregoing deposition was by me duly sworn pursuant  
7 to Section 2093(b) and 2094 of the Code of Civil  
8 Procedure;

9

10 That said deposition was taken down by me in  
11 shorthand remotely and thereafter reduced to text under  
12 my direction.

13

14 I further declare that I have no interest in the  
15 event of the action.

16

17 I declare under penalty of perjury under the laws  
18 of the State of California that the foregoing is true  
19 and correct.

20

21 WITNESS my hand this 1st day of November, 2024.

22



23

BONNIE ANN GROSE, CSR 11703

24

25

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1 ALEC J. BERIN, ESQUIRE

2 ajberin@millershah.com

3 November 1, 2024

4 RE: Laliberte, Mary Et Al v. Quanta Services Inc Et Al

5 10/18/2024, Richard A. Marin (#6946843)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
13 Deponent and Errata and return to the deposing attorney.  
14 Copies should be sent to all counsel, and to Veritext at  
15 erratas-cs@veritext.com

16 Return completed errata within 30 days from  
17 receipt of testimony.

18 If the witness fails to do so within the time  
19 allotted, the transcript may be used as if signed.

20

21

22

Yours,

23

Veritext Legal Solutions

24

25

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1 Laliberte, Mary Et Al v. Quanta Services Inc Et Al

2 Richard A. Marin (#6946843)

3 E R R A T A S H E E T

4 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

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6 REASON \_\_\_\_\_

7 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

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9 REASON \_\_\_\_\_

10 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

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12 REASON \_\_\_\_\_

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21 REASON \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 Richard A. Marin Date

25 \_\_\_\_\_

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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